SUPREME COURT OF THE UNITED STATES.

No. 342.

THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON, PLAINTIFF IN ERROR,

VS.

THE UNITED STATES EX REL. CLARK DURANT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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A Pleas and proceedings had in the Circuit Court of the United States for the district of Iowa, at the regular term thereof, begun and held at the city of Des Moines, Iowa, on the 16th day of Oct. A. D. 1867.

Hon. S. F. Miller, circuit judge, presiding, and Hon. J. M. Love, district judge.

B Circuit Court of the United States for the district of Iowa.

Be it remembered that heretofore to wit, on the 16th day of October, A. D. 1867, there was filed in the office of the clerk of the Circuit Court of the United States for the district of Iowa, a petition for mandamus in words and figures following, to wit:

1 In United States Circuit Court for the district of Iowa,
October term, A. D. 1867.

Petition for mandamus.

THE UNITED STATES, ON THE RELATION OF Clark Durant,
vs.
THE BOARD OF SUPERVISORS OF WASHINGTON county, Iowa.
} 467. Petition for mandamus.

To the judges of the United States Circuit Court for the district of Iowa:

Now comes Clark Durant and gives this court to be informed, that he is a citizen of the State of New York; and the county of Washington, Iowa, is a corporation existing under the laws and a citizen of the State of Iowa.

That on the 16th day of May, A. D. 1867, by the judgment and consideration of this court, upon due process of law, he recovered against the county of Washington judgment for the sum of $70,652 37, costs taxed at $50 10 and 7 pr. ct. interest from the date of said judgment. That execution has been issued upon said judgment and returned no property found. That the said county of Washington has no property subject to execution out of which said judgment can be made.

2 That on the 21st of November, 1853, the county judge of Washington county, Iowa, did in due form of law submit to the electors of that county, the question of a subscription by the said county of one hundred thousand dollars to the stock of the Philadelphia, Ft. Wayne Platte River Air Line railroad, and issuing the bonds of said county to pay said subscription, bearing six per cent. interest and having not more than twenty years to run, and said proposition was adopted by a majority of the voters of said county. and duly entered at large on the minute book of said county.

That on the 7th day of August, 1854, the county judge of said county of Washington submitted to the electors of said county of Washington the proposition, that the said Washington county will

rescind fifty thousand dollars of the stock voted to the Philadelphia, Fort Wayne and Platte River Air Line railroad, at the special election held in said county, in November, 1853, and subscribe the same to the Mississippi and Missouri railroad, and said Washington county will subscribe fifty thousand dollars stock when so rescinded to the Mississippi and Missouri railroad, and that there be issued county bonds therefor, bearing interest at a rate not greater than ten per cent. per annum and payable in twenty years from date, and that there be a tax of five mills on the dollar if necessary levied
3 on the taxable property of said county from year to year for
the purpose of paying the interest on said bonds, and after the expiration of fifteen years, the rate of tax to be so increased as not to exceed one per cent. on the dollar if necessary, for the purpose of paying off said bonds said rate of tax to be continued until said bonds with the interest is all paid, unless said bonds are otherwise disposed of; and that the said bonds shall not be issued except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of stock in said railroad, and then only as fast as the road progresses towards completion within the limits of said county. That at said election said proposition was duly adopted by a majority of the electors of said county, and the proposition and vote were by the county judge duly entered at large on the minute book of said county.

And on the 5th day of April, 1858, the county judge of said county of Washington did in due form of law submit to the electors of Washington county the following proposition: That the county of Washington, in the said State, will aid in the construction of the Mississippi and Missouri railroad by the subscription of one hundred thousand dollars in addition to the 50,000 dollars already authorized to the capital stock of said railroad company, and the bonds of said
4 county be issued in payment of said stock, bearing interest at
the rate of ten per cent. per annum, payable in twenty years from date, and that there be a tax of not more than three mills on the dollar levied on the taxable property of said county from year to year for the purpose of paying the interest on said bonds, and after the expiration of fifteen years, the tax be so increased as not to exceed ten mills on the dollar for the purpose of paying off said bonds; said tax to continue from year to year until said bonds are all paid off, unless otherwise disposed of; said bonds not to be issued, unless said company give to said county good and sufficient security approved by the county judge, in the sum of two hundred thousand dollars, conditioned that said road be completed and in good running order to the town of Washington in said county and State, by the 1st day of Sept., 1858, and that a depot be permanently established not more than one half mile from the court-house in said town of Washington, and not then, unless said company take said bonds at their face in payment of stock in said road.

Said stock to be issued direct to the county, said election to be governed the election laws of the State of Iowa; that at said election a majority of the votes cast were in favor of said propo-

5 sition, and the county judge did cause the same, and the result of the vote to be entered at large on the minute book of said county.

That each class of said bonds were issued by the said county judge with coupons or interest notes for the interest payable every six months. Said bonds were made payable to James Dawson or bearer.

That relator's judgment is for interest due and unpaid upon said bonds.

Plaintiff avers that prior to the year 1860 it was the duty of the county judge of said county to cause to be levied the taxes specified in said votes of the people of Washington county, to pay the interest on said bonds, and he neglected to perform that duty, and after the year 1860, the general assembly of the State of Iowa, did authorize the board of supervisors of Washington county to provide for the levy and collection of said taxes. That the valuation of the property in Washington county is not less than four millions of dollars, and a levy of three mills on the dollar in the case of each class of said bonds, will produce a sum more than sufficient to pay the yearly interest on each class of the same.

That both before and after the recovery of said judgment it was the duty of said board of supervisors to levy and collect or
6 cause to be collected the said taxes, and a demand has been made on the said board of supervisors that they levy and cause said taxes to be collected to pay said judgment and interest and costs, and that they have refused so to do.

That of said judgment one third, or the sum of $23,550, was due on the bonds issued under the vote of 7th of August, 1854, and two-thirds, or $47,100, due on the bonds issued under the vote of 5th of April, 1858.

That it is provided by the general laws of the State of Iowa, that any municipal corporation against whom a judgment has been, or shall be rendered shall, as early as practicable, levy and collect a tax sufficient to pay the same.

That your relator is without other adequate remedy at law.

He prays for a writ of mandamus, directed to the board of supervisors of Washington county, commanding them forthwith to levy and cause to be collected a special tax of not over five mills on the dollar, of the taxable property of said county, sufficient to pay the sum of twenty-three thousand five hundred and fifty dollars of said judgment and interest, under and by virtue of the vote the electors of said county on the 7th of August, 1854.

And a specific tax of not over three mills on the dollar of the taxable property of said county sufficient to pay the sum of forty-
7 seven thousand one hundred dollars, the balance of said judgment and interest, under and by virtue of the electors of said county, on the 5th of April, 1858, and for costs of said suit, taxed at $50.16, and the costs of this proceeding, and that they cause said taxes to be continuously every year for 1867, and the previous four years assessments, and for each subsequent year to 1867, levied and collected,

and pay therewith said judgment, interest, and costs until the same are fully satisfied.

CLARK DURANT.

STATE OF IOWA, *Scott Co.*, *ss*:

I, J. Grant, do state on oath that I am pl'ffs att'y, and familiar with the facts in said information stated, and the same are true, as I verily believe.

JAMES GRANT.

Subscribed and sworn to by J. Grant, before me, and in my presence, this 9th day of Sept., A. D. 1867.

S. F. SMITH,
N. P., Scott Co., Iowa.

Circuit Court of the United States for the district of Iowa.

At a term of the Circuit Court of the United States for the district of Iowa, begun and holden at the city of Des Moines, Iowa, on the 16th day of October, A D. 1867; present, the Hon. S. F. Miller, circuit judge, Hon. J. M. Love, district judge.

Among other, the following proceeding was had, to wit:

THE UNITED STATES EX REL. CLARK Durant,
v.
BOARD OF SUPERVISORS OF WASHINGTON County, Iowa.
No. 467.

This cause now comes on to be heard; Grant, for the plaintiff, files his information for a writ of mandamus, and the court orders that the alternative writ issue, as prayed for, returnable to the next term of this court.

8 *Writ of mandamus.*

The United States of America, to the board of supervisors of Washington county, Iowa:

Whereas it has been represented to our Circuit Court of the United States for the district of Iowa, that Clark Durant is a citizen of the State of New York, and the county of Washington, Iowa, is a corporation existing under the laws, and a citizen of Iowa. That on the 16th day of May, A. D. 1867, by the judgment and consideration of this court, upon due process of law, he recovered against the county of Washington judgment for the sum of $70,652 37, costs taxed at $50 10 and 7 pr. ct. interest, from the date of said judgment. That execution has been issued upon said judgment and returned no property found.

That the said county of Washington has no property subject to execution, out of which said judgment can be made. That on the 21st

of November, 1853, the county judge of Washington county, Iowa, did, in due form of law, submit to the electors of that county the question of a subscription by the said county, of one hundred thousand dollars to the stock of the Philadelphia, Fort Wayne and Platte River Air Line railroad, and issuing the bonds of said
9 county to pay said subscription bearing six per cent. interest,
and having not more than twenty years to run, and said proposition was adopted by a majority of the voters of said county, and duly entered at large on the minute book of said county.

That on the 7th of August, 1854, the county judge of said county of Washington submitted to the electors of said county of Washington the proposition that the said Washington county will rescind fifty thousand dollars of the stock voted to the Philadelphia, Fort Wayne and Platte River Air Line railroad, at the special election held in said county, in November, 1853, and subscribe the same to the Mississippi and Missouri railroad, and said Washington county will subscribe fifty thousand dollars stock, when so rescinded, to the Mississippi and Missouri railroad, and that there be issued county bonds therefor, bearing interest at a rate not greater than ten per cent. per annum, payable in twenty years from date, and that there be a tax of five mills on the dollar, if necessary, levied on the taxable property of said county, from year to year, for the purpose of paying the interest on said bonds, and after the expiration of fifteen years the rate of tax to be so increased as not to exceed one per cent. on the dollar, if necessary, for the purpose of paying off said bonds, said
10 rate of tax to be continued until said bonds, with the interest,
is all paid, unless said bonds are otherwise disposed of, and that said bonds shall not be issued except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of stock in said railroad, and then only as far and as the road progresses towards completion, within limits of said county.

That at said election said proposition was duly adopted by a majority of the electors of said county, and the proposition and vote were, by the county judge, duly entered at large on the minute book of said county. And on the 5th day of April, 1858, the county judge of said county of Washington, did, in due form of law, submit to the electors of Washington county the following proposition, that the county of Washington, in the said State, will aid in the construction of the Mississippi and Missouri railroad by the subscription of one hundred thousand dollars, in addition to the 50,000 dollars already authorized, to the capital stock of said railroad company, and the bonds of said county to be issued in payment of said stock, bearing interest at the rate of ten per cent per annum, payable in twenty years from date, and that there be a tax of not more
11 than three mills on the dollar levied on the taxable property
of said county from year to year, for the purpose of paying the interest on said bonds, and after the expiration of fifteen years the said tax to be so increased as not to exceed ten mills on the dollar, for the purpose of paying off said bonds, said tax to continue from year to year until said bonds are all paid off, unless otherwise

disposed of; said bonds not to be issued unless said company give to said county good and sufficient security, approved by the county judge, in the sum of two hundred thousand dollars, conditioned that said road be completed and in good running order to the town of Washington, in said county and State, by the 1st day of September, 1858, and that a depot be permanently established not more than one half mile from the court-house in said town of Washington, and not then unless said company take said bonds at their face in payment for stock in said road, said stock to be issued direct to the county, said election to be governed by the election laws of the State of Iowa; that at said election a majority of the votes cast were in favor of said proposition, and the county judge did cause the same and the result of the vote to be entered at large on the minute book of
12 said county.

That said class of said bonds were issued by the said county judge, with coupons or interest notes for the interest payable every six months. Said bonds were made payable to James Dawson, or bearer.

That relator's judgment is for interest due and unpaid upon said bonds. Plaintiff avers that prior to the year 1860 it was the duty of the county judge of said county to cause to be levied the taxes specified in said votes of the people of Washington county, to pay the interest on said bonds, and he neglected to perform that duty, and after the year 1860 the general assembly of the State of Iowa did authorize the board of supervisors of Washington county to provide for the levy and collection of said taxes.

That the valution of the property in Washington county is not less than four millions of dollars, and a levy of three mills on the dollar, in the case of each class of said bonds, will produce a sum more than sufficient to pay the yearly interest on each class of the same.

That both before and after the recovery of said judgment it was the duty of said board of supervisors to levy and collect, or cause to be collected, the said taxes, and a demand has been made on the said board of supervisors that they levy and cause said taxes
13 to be collected to pay said judgment, interest and costs, and
that they have refused so to do.

That of said judgment, one-third or the sum of $23,550, was due on the bonds issued, under the vote of 7th of August, 1854, and two-thirds or $47,100 due on the bonds issued under the vote of 5th of April, 1858.

That it is provided by the general laws of the State of Iowa, that any municipal corporation against whom a judgment has been or shall be rendered shall, as early as practicable, levy and collect a tax sufficient to pay the same; that your relator is without other adequate remedy at law; now, therefore, you, the said board of supervisors of Washington county, Iowa, are hereby commanded forthwith to levy and cause to be collected a specific tax of not over five mills on the dollar of the taxable property of said county, sufficient to pay the sum of twenty-three thousand and five hundred and fifty dollars of said judgment and interest, under and by virtue of the

vote of electors of said county on the 7th of August, 1854; and a specific tax of not over three mills on the dollar of the taxable property of said county, sufficient to pay the sum of forty-seven thousand one hundred dollars, the balance of said judgment and interest under and by virtue of the vote of the electors of said
county on the 5th of April, 1858, and for costs of said suit,
14 taxed at $50 10, and the costs of this proceeding, and that
you cause said taxes to be continuously levied and collected every year for the year 1867, and the previous 4 years, and for each subsequent year, and pay therewith said judgment, interest and costs until the same are fully satisfied, or that you appear before our said Circuit Court, at Des Moines, at the court-house in Polk county, on the 12th day of May, A. D. 1868, to show cause why you refuse so to do.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court, and the seal of said Circuit Court, this 24th day of October, A. D. 1867.

[L. S.] (Signed) W. G. WOODWARD, *Clerk.*

And afterwards, to wit, on the 28th day of May, A. D. 1868, there was filed in the office of the clerk of said court an answer to the alternative writ in words and figures following, to wit:

15 In Circuit Court, United States for dist. of Iowa.

467. *Answer to petition.—Filed May* 28, '68.

U. S. EX REL. CLARK DURANT
v.
BOARD OF SUPERVISORS OF WASHINGTON COUNTY. } No. 467. Answer.

Now come the respondents, the board of supervisors of Washington, Iowa, and answer the alternate writ of mandamus, and say: They admit the bonds and coupons, described by relator were issued by the county judge, in the name of said county, after the vote taken in subscription to capital stock of the Mississippi & Mo. R. R. Co.

Deny that the bonds recite that the vote authorizing their issue was taken.

Admit that relator is the owner or the owner of the bonds or coupons upon which he obtained the judgment upon which the said writ was issued, and allege the same to be true.

Deny that said vote and the entry thereof had the effect of a mortgage.

Deny that it was the duty of the def'ts to levy said tax claimed.

Admit that relator recovered judgment May 16, 1867, against said
county for 70,652 37-100 dollars, or about that sum, which
16 judgment def'ts allege was recovered in a suit brought by
relator in this court, against said county, on the 16th day of
May, A. D. 1867, and not before, and which suit was brought, and the petition therein filed, and the notice served in the year 186 and not before, and long after the relator was made a party and ap-

peared in the injunction proceedings in the State Court of Iowa, hereinafter referred to.

Deny that relator is without other plain and adequate remedy.

Def'ts further state for answer:

That they have always been and now are well disposed to levy said tax and perform all others required, and to obey all the mandates of this court, but that they and their predecessors were prevented and legally prohibited from levying said tax by reason of the facts hereinafter following:

That they have had no power or authority to levy said tax since April 12, 1860.

That for the year 1859, the county judge did levy a special tax of 4 mills on the dollar for the payment of said coupons, and the proper officers of said county were, in good faith, about to proceed to collect said special tax so levied when he was enjoined and prohibited
17 from so doing as hereinafter shown, to wit:

On the 12th day of April, A. D. 1860, and long before the bringing of the suit by relator, on which he recoved his said judgment in this court, in said alternative writ named and before this court acquired any jurisdiction over the said county, or over these defendants, or of the subject-matter of said suit, a petition in equity was filed in the District Court of Washington county, in said State in which Nathaniel McClure and others named therein were pl'ffs, and S. P. Young, the county judge, and S. G. Owen, county treasurer, and the Mississippi and Missouri Railroad Company were made def'ts, and all of said def'ts were duly and personally served with notice April 27th, A. D. 1860, as by law provided; in the petition in which cause it was among other things alleged that said county judge was about to proceed to levy and collect a tax for the payment of said coupons, which are the same coupons upon which the relator subsequently brought suit in this court and recovered the said judgment. That said def'ts therein had no authority to levy and collect said contemplated special tax for the payment of said coupons, executed for the interest on said bonds in the alternative writ described, and praying that said county judge and treasurer, and their suc-
18 cessors in office be forever enjoined from levying and collecting said special tax, or any tax, for the payment of said bonds and coupons.

Def'ts state that they are the successors of the said county judge upon whom is now the general duty, and has been since the year 1860, under the laws of Iowa, to levy all taxes legally leviable upon the property in said county subject to taxation.

That notice of said suit was served upon said county judge and his co-def'ts on the April 27, A. D. 1860, and said court had complete jurisdiction of all of said def'ts in said injunction suit and of the subject-matter thereof.

Said petition was duly presented to the hon. E. M. Miller, one of the judges of the District Court of Iowa, who had general power to grant writs of injunction and who ordered said writ of injunction to issue as prayed for, and a writ of injunction was issued by the clerk

of District Court, said county, and was legally served upon said county judge and treasurer April 27th, A. D. 1860, and the same is still in full force and operation, and is legally binding upon him and his co-def'ts, and upon these respondents as his successors in [in] office who were and have been duly substituted as def'ts in said suit in State Court as the successors of said county judge before any suit had been brought by relator upon said coupons, and before this
court had acquired jurisdiction of the said county or of said
19 county judge or his co-defendants, or of these def'ts by any
proceedings whatever.

Def'ts allege that said petition in equity charged that said bonds had been illegally issued, were invalid and that said holders, including relator, took them with notice of their invalidity and not bona fide.

In which petition it was further prayed that the holders of said bonds whenever they should become known, might be made parties def't in said suit, in which suit in equity it was prayed that the said county judge and treasurer and these respondents as the successors in office of said county judge be forever enjoined and prohibited from levying any tax for the payment of said bonds, and that the holders of said bonds be forever enjoined from proceeding to collect the same by compelling the levy of a tax for their payment.

Respondents further state that the relator, Clark Durant, on the 16th day of November, A. D. 1860, appeared in said cause and on his own motion was made a party def't therein, and filed his answer in said cause together with other holders of bonds of the said county, and thereby submitted himself to the jurisdiction of the said court, and became and was concluded by all proceedings, orders and judg-
ments of the said court in said cause, and by said writ of in-
20 junction issued therein which appear and answer in said
cause of said Clark Durant, the relator, was made long before
the bringing by him of his suit in this court, upon which he recovered said judgment.

Respondents state that said writ of injunction is in full force and effect, and [and] is binding upon respondents and upon relator.

That subsequently such proceedings were had in said cause in the State Court that a final decree was rendered therein, making perpetual the said writ of injunction, and forever enjoining said respondents from levying said tax, and forever enjoining relator from proceeding to compel the levy of the same. Said cause was submitted upon final hearing, at Sept. term, 1867, of District Court of the State, and said final decree therein was rendered May 25, 1868.

All of the proceedings in said cause are binding upon def'ts, and upon relator, and by said injunction and by said final decree, respondents are prohibited from proceeding to levy said tax, and relator is prohibited from proceeding to compel the [the] levy of the same.

That by said injunction suit to which relator and respondents were parties, said State Court acquired jurisdiction of relator and of respondents, and of the subject-matter and controversy, long before this court acquired jurisdiction of the said county, in said suit, upon

the coupons, or of these respondents, or of relator or his
21 rights, and has rendered a final decree therein, and respond-
ents should not be required to levy said tax, and relator cannot longer maintain this proceeding against respondents, and should not have a peremptory writ of mandamus as prayed for.

Respondents filed herewith a certified transcript of all the proceedings in said injunction suit, and make the same a part of this answer and return, marked "exhibit A," and state that they would be guilty of contempt of the said court if they proceeded to levy said tax, and relator has no right to compel respondents so to do.

Respondents pray to be hence dismissed.

H. STRONG & J. R. LEWIS,
Att'ys for Respondents.

I, J. R. Lewis, on oath state I am one of the att'ys for def'ts, and am knowing to the truth of the facts stated in foregoing answer, and am authorized by respondents to verify the same, and that I believe the allegations therein contained are true; that I have better knowledge of the facts than respondents themselves.

J. R. LEWIS.

Subscribed and sworn to before me, this 28 May, 1868.

W. G. WOODWARD, *Clerk.*

Filed May 28, '68.

W. G. WOODWARD, *Clerk.*

NATHANIEL MCCLURE *et al.*
vs. } 467.
SAMUEL G. OWEN *et al.*

22 JAN. 17*th*, 1865.

Now this cause coming on for hearing, this cause is submitted to the court.

Exhibit.

AMANDA M. MCCLURE, EXECUTRIX, AND L. F. Sherman, executor of the last will and testament of Nathaniel McClure, dec'd, John Martin, Michael Hayes, O. H. Prizer and Wm. R. Nugent,

vs.

SAMUEL G. OWEN, TREASURER AND COLLECTOR, and the Board of Supervisors of Washington county, Iowa, and their successors in office, Mississippi and Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, William Newton, and Richard Mortimer, respondents.

And now, to wit, on this 23d day of January, 1865, the same being the 7th day of the January term of the District Court of Washing-

ton county, in the State of Iowa, for the year 1865, this cause coming to be heard on the bill filed, and the answers of def't, M. and M. R. R. Co., Clark Durant, Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, William Newton, Richard Mortimer, and exhibits on file with the petition, and the court being fully
23 advised in the premises, does find that the equity of the case
is with said complainants, and that they, as well as those in whose behalf said bill is filed, to wit, all those liable to pay taxes in said Washington county, under the laws of the State of Iowa, and to be assessed for said purposes by the proper officers of said county, are entitled to the relief prayed for in said bill, does order, adjudge, and decree as follows:

First. That Samuel G. Owen, treasurer and collector of Washington county, Iowa, and his successors in office, be perpetually enjoined and restrained from proceeding to collect by distress and sale of property, or in any other manner, all such taxes as were, prior to the year 1860, levied in said Washington county, Iowa, for the purpose of paying the principal or interest, or any part or portion of principal or interest due or to become due on one hundred bonds of five hundred dollars each, issued to the Mississippi and Missouri Railroad Company, on the 7th day of June, 1858, by the county judge of said Washington county, and on one hundred bonds of one thousand dollars each in like manner issued by the county judge, to said respondent, the Mississippi and Missouri Railroad Company, on the 26th day of July, 1858, or on the coupons or interest bonds issued with them. It is further ordered, adjudged, and decreed, that said respondent, the board of supervisors of Washington county, Iowa, and their successor or successors in office be perpetually en-
24 joined and prohibited from levying any tax in said Washing-
ton county, for the purpose of paying principal or interest now due, or at any time hereafter to become due on said bonds, or either of them, or on any interest or coupon bonds issued with said bonds, or any of them; and that said respondents, and each and every of them, be perpetually enjoined and prohibited from collecting or attempting to collect, said bonds, or any of them, or any interest bonds or coupons issued with them, by the levy and collection of any tax upon the taxable persons or property of said county. It is further ordered that said complainants recover from said respondents their costs herein expended, taxed at .

WM. LAUGHRIDGE, *Judge.*

25 Filed in Washington Dist. Court, June 16th, 1865.

McCulre *et al.*
vs. } 647.
Owen and others *et al.*

State of Iowa, *Washington Dist. Court* :

Now comes Clark Durant, Joseph E. Sheffield, Betsey D. Tracy and Thomas Durant, C. W. Durant, Thomas Dunn, Wm. Newton, John M. Newton & Richard Mortimer, holders and owners of said bonds who formerly appeared to have the same transferred to the District Court of the United States for the State of Iowa, and ask leave of the court to file answer of facts occurring since their last answer was filed, and the same is granted to them.

And therefore these defendants say, that on the 15th of August, 1860, Clark Durant, for himself and the others defendants, owners of said bonds, commenced in the District Court of the United States for the district of Iowa an action of law against Washington county upon said bonds and coupons referred to in the bill to recover the installments of interest thereof for July, 1859, January, 1860, and July, 1860, and on the 17 of September, 1860, the county of Washington appeared in said cause, and filed a plea to the jurisdiction of which a copy is hereunto annexed; and on the 9th day of October, 1860 and pleas was amended, of which a copy is hereto annexed; and 26 the plaintiff demurred to said plea, and the said plea was overruled by the court, and which proceedings was afterwards had, that the defendants pleaded in bar of the plaintiffs' suit, and among other things, the same matters set up in this bill and particularly that said bonds were unconstitutional and void; after said plea in bar filed and on the 22 of May, 1863, the said county and said Durant did make an open statement of facts in relation to said bonds, and the cause was submitted to the court upon the same, and the said cause was heard in the Circuit Court of the United States for the district of Iowa on the 22 of May, 1863, and judgment was rendered for Clark Durant, and the defendant removed said cause to the Supreme Court at Washington, where the same is now pending, as by a record thereof hereunto annexed will fully appear; and the defendants say that the facts and the law arising in that case and the present case are the same.

And they further say that purchased said bonds, and became the holders thereof, in the year 1858, and at that time, the Supreme Court of Iowa held that bonds similar to them and issued for a like purpose were authorized by the constitution of Iowa, and the defendants bought the same in good faith for value upon the faith of said decisions.

Whereof the defendants pray that as to them the said bill may be dismissed.

GRANT,
For said Defendants.

27 STATE OF IOWA, *Scott County*, *ss*:

I, James Grant, declare on oath that I am attorney for the defendants here named; that they are not residents of this State, and I answer all the facts as was set forth, except the fact as to the purchase of said bonds, and that the facts set forth are true, as I believe, as to the purchase, and as I answer to the others.

JAMES GRANT.

Subscribed and sworn to by J. Grant before me this 16th day of June, A. D. 1865.

Witness my hand and seal the day and year last above written.

[NOTARIAL SEAL.] S. F. SMITH,
Not. Pub., Scott County, Iowa.

28 District Court in and for the southern district of the State of Iowa.

CLARK DURANT
vs.
THE COUNTY OF WASHINGTON. } 647.

THE UNITED STATES OF AMERICA:

Comes now the said defendants, by Patterson and Scofield, its attorneys, and for plea in this behalf says, that this court ought not further to have and maintain jurisdiction in this cause, because it says that the Mississippi & Missouri R. Company, a citizen of the State of Iowa, having been incorporated as such, under and by virtue of the laws of Iowa contained in chapter 43 of the code, and that as such citizen and corporation, having entered into the objects of its said incorporation, and surveyed and projected a railroad from the Mississippi to the Missouri river, proposed to the said county of Washington that she would immediately enter upon the construction of said road, and would build and constructed the same through the county of Washington aforesaid, if said county would loan her credit to said road company, which said proposition was by said county accepted, by said county, on condition that she was to become one of
said corporation, by receiving the certificates of the capital
29 stock of said railroad company to the full amount of the
securities by her so loaned to said railroad company; that, in pursuance of said agreement, said bonds, in said plff's petition mentioned, were issued to the said James Dawson as the agent and trustee of the said railroad company, and were by him delivered to said pl'ff without said companies having received any consideration therefore, and that said pl'ff well knowing all the circumstances of said transactions, that said railroad company, on account of its being a citizen of said State could not suein this hon. court, received the same for the purposes of instituting this suit, all of which this def't is ready to verify. Wherefore, it prays judgment, and for other plea in behalf, def't says that the court here should not entertain jurisdiction on this behalf, because it says that the county of Washington aforesaid is not a citizen of the State of Iowa within the true intent and meaning of the second section of the article of the Constitution of the United States; and for other and further plea, def'ts says that court should not entertain jurisdiction, because it says that it is created and erected into a county for the purpose soly of exercising certain
sovereign powers delegated to it by the State of Iowa, and for
30 no other purpose whatever, and that it is a part of the govern-
ment of the State of Iowa, and as such, comes within the true

intent and meaning of the eleventh article of the amendments of the Constitution of the United States, and cannot be used in this hon. court.

And for other plea in this behalf, def't says, that this hon. court should not have or entertain jurisdiction in this cause, because it says that it was erected into, and became a corporation (if a corporation at all,) under and by virtue of a territorial law of the Territory of Wisconsin, at that time one of the Territories of the United States, and in no other manner. and that it does not hold its corporate existence by any legislative act of said State of Iowa; all of which def't is ready to verify. Wherefore it pray judgment.

PATTERSON & SCOFIELD,
Att'ys for Def't.

Endorsed: Filed Sept. 17, 1860. A. Y. Walling, dep. clerk.

31 CLARK DURANT
vs.
WASHINGTON COUNTY.

Comes the deft, and for further plea in this behalf, says that there is now pending in the District Court in for the county of Washington, in the State of Iowa, an original bill in chancery, filed by Nathaniel McClure and several other citizens of said county, praying said court to forever enjoin the levy and collection in said county of any taxes for the purpose of paying principal or interest on the bonds sued on in this cause, and praying that said bonds, both principal and interest, may be decreed to be null and void and of no effect in law or equity, to which said bill the said def't, the treasurer and recorder of said county; and the county judge of the railroad co. mentioned in said bonds, and the unknown holders of said bonds were made parties, and that the present pl'ff, as one of the owners of said bonds and said railroad company, has filed answer in said cause denying the allegations of said bill, and that the issue is still pending and undetermined in said court. Wherefore def't prays judg't whether this court will further maintain jurisdiction in this cause.

Endorsed: Filed Sept. 17, 1860. A. F. Walling, dep. clerk.

32 CLARK DURANT
vs.
WASHINGTON COUNTY.

Comes now the def't, and for amended plea in this behalf says that the pl'ff should not have and maintain his action aforesaid in this hon. court, because he says that there is now pending in the hon. District Court of Washington county, Iowa, an original bill in chancery, in which on Nathaniel McClure and several other persons, complainants, and the county judge of said county, the treasurer and collectors of said county, the said plaintiff and the unknown owners of the railroad bonds issued by said county were made respondents, and that said railroad company and said def't by J. Grant, their sol'r,

have answered said bill; that bill prays for an injunction restraining said county judge from levying any more taxes for the payment of principal or interest on the bonds issued by said county for railroad purposes; that the treasurer of said county be also restrained from collecting, by distress or otherwise, the taxes at that time or which might thereafter be levied for the payment of the principal or interest or any of said bonds; that said original bill was presented to the hon. thejudge of said District Court at the April term thereof for the
33 year 1860, and an allowance of said injunction or decree thereon;
that said bill was during said term filed and the injunction prayed issued during said term and duly served on said officers; that said bill further prays said injunction to be made perpetual; that the bonds and interest therewith issued for said railroad purposes as aforesaid may be decreed to be null and void and of no effect whatever, either in law or equity; that the same may be delivered up to be cancelled, and for other and general relief; that said original bill is still pending in said court and undetermined in any manner, and that said injunction is still of force, undissolved or in any manner modified; all of which def't is ready to verify; therefore he prays judgment, &c.

Endorsed: Patterson & Scofield. Filed Oct. 9, 1860.

34 Washington Dist. Court.

AMANDA MCCLURE, L. F. SHERMAN, JOHN Mather, Michael Hays, O. H. Prizer and W. R. Nugent,
vs.
SAMUEL G. OWEN, S. P. YOUNG, THE BOARD of Supervisors of Washington county, The Mississippi & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, William Newton, Richard Mortimer.
} Filed in Washington Dist. Court Sept. 20, 1865.

STATE OF IOWA:

The above named plaintiffs, and the defendants, Samuel G. Owen, S. P. Young, and the board of supervisors of Washington county, will take notice that the defendants, The Mississippi and Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, William Newton and Richard Mortimer, have taken an appeal from the decision of the District Court to the Supreme Court of Iowa, at the next term to be held at Davenport, Scott county, Iowa.

GRANT, *for Pl'ff.*

35 MCCLURE AND OTHERS
vs.
OWEN AND OTHERS.

Be it remembered, that this cause was submitted to the court the January term, 1865; that the board of supervisors of Washington county and S. G. Owen, treasurer of Washington co., presented by their att'ys and the rest of the defendants were not present; that the cause was submitted to be taken by the court and decided in vacation, the att'y or att'ys then present consenting, the other def'ts not making no agreement; that the cause was decided and decree made in vacation on or about August 10, 1865, and transmitted to the clerk in vacation as of the last day of the January term, 1865. There was no evidence offered to the court; the cause was tried on the bill and answer of Mississippi and Missouri R R. Co., Clark Durant, Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Thos. Dunn, William Newton, Richard Newton; no default was taken against any of defendants. To the decision of the cause in vacation the said last-named def'd'ts objected, and ask the court to sign this bill of exception, which is done at the time of rendering the decree.

W. LOUGHRIDGE, *Judge.*

36 *Bond for appeal to Supreme Court of Iowa.*

Know all men by these presents, that we, the Mississippi & Missouri Railroad Company, Thomas Durant, Betsey Tracey, Clark Durant, Joseph E. Sheffield, Thomas Dunn, William Newton and Richard Mortimer, principal, and C. Whitaker, jointly are held and firmly bound unto Amanda McClure, L. F. Sherman, John Mather, Michael Hays, O. H. Prizer and W. R. Nugent, in the penal sum of one hundred dollars, to which payment we bind ourselves and each of us the 24 day of Jan'y, 1865.

The condition of this obligation is this: whereas the above-named obligors have appealed from the decision of the District Court of Washington county, Iowa, in a certain bill in equity whereas the the above-named obligors and Samuel G. Owen and others are defendants: Now if said obligors shall fully present their appeal and shall pay all costs and damages which may be awarded against them, and satisfy and perform all the orders and decrees of the Supreme Court in the premises, this obligation be and otherwise in full force.

MISS. MO. R. R. CO.
THOMAS DURANT.
BETSEY D. TRACY.
JOSEPH E. SHEFFIELD.
THOMAS DUNN.
WM. NEWTON.
RICHARD MORTIMER,
Obligee principal.
J. GRANT, *Att'y.*
C. WHITACHER.

37 Washington District Court.

McLure & others }
vs.
Owen & others. }

Now on this 29th day of September, 1865, the second day of the term of this court after said cause is decided, comes the Mississippi and Missouri Railroad company, Clark Durant, Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, William Newton and Richard Mortimer, and pray an appeal in this cause to the Supreme Court which is allowed to them, and the said appeal is to be made a supercedias, upon the said defendants filing a bond in thirty days, to be approved by the clerk of this court, in the penal sum of one hundred dollars, which bond may be dated as of the term when the decision was made, nunc pro tunc, and have same effect as if filed of said term, and notice of appeal given within thirty days to have the same effect as if it had been given in thirty days after the term at which the decree is made.

WM. LOUGHRIDGE, *Judge.*

38 *Decision of Supreme Court.*

Nathaniel McClure *et al.* }
vs.
S. G. Owen *et al.* }

In addition to the matters set out in the transcripts and records of the papers on file in the cause, a procedendo from the Supreme Court of Iowa was received by the clerk of the District Court of Washington county, Iowa, Aug. 15th 1866, in the words and figures following, to wit:

The State of Iowa, *ss:*

The State of Iowa to the District Court for the county of Washington.

Whereas the Supreme Court of said State being lately certified of the record and proceedings in a certain cause which was in the District Court for the county of Washington and State aforesaid, wherein N. McClure et al., plaintiff, and S. G. Owen et al., defendant, in which said cause judgment was rendered against the said defendants appealed to the Supreme Court, and the said court having duly examined the records and proceedings aforesaid in the premises at the capitol, in Des Moines, in said State, on the 28th day of June, 1866, did reverse the [the] judgment aforesaid as rendered in the court below, and order that further proceedings be had in the court below not inconsistent with the opinion of this court.

39 Therefore, you are hereby commanded, with the speed which of right and according to law you may, you proceed in the same manner as if no judgment had been rendered in the court

below, or no appeal had been taken up and prosecuted in this court, anything in the record or proceedings aforesaid heretofore certified to the contrary notwithstanding.

Witness Lewis Kinsey, clerk of the Supreme Court, with the seal of said court hereunto affixed, at Des Moines, this 10th day of August, A. D. 1866.

[SEAL.]

LEWIS KINSEY,
Clerk of the Supreme Court.

STATE OF IOWA, *Washington county*:

I, C. T. Jones, clerk of the District Court in and for Washington county, State of Iowa, do hereby certify that the above and foregoing is a full, true and complete transcript of the procedendo filed in this office in the foregoing entitled cause:

40 From Washington Dist. Co.

Practice, decision in vacation, &c.

McCLURE *et al.*,
vs.
OWEN *et al.*
June term, 1866.

Bill for injunction. Answer by a portion of the defendants denying many of the matters set up in the petition; Decree as prayed, and a portion of the defendants appeal.

Grant and Smith for appellant. Patterson and Rhinehart for appellee.

Dillin, J:

The decree in this cause must be reversed for two reasons:

1st. It is against the board of supervisors, and they are not parties defendants in the original petition, nor are they made defendants by a supplemental petition or order of court.

2. The bill of exceptions recites, and it is made affirmatively to appear, that without the consent or agreement of the defendant who had answered, the cause was decided in vacation, and a decree in vacation adverse to them entered.

This was error (Tounsley vs. Marchead, 9 Iowa, 565.)

In his argument the appellants' counsel offered to waive
41 these errors if the court will pass upon the constitutional
question which they clame is presented by the record, viz: that it is the duty of this court to follow the decisions of the Supreme Court of the United States respecting the validity of bonds issued by a municipal and public corporations to aid in the construction of railroads.

One of the judges of this court (Mr. Justice Wright) was counsel in the present cause in the court below, and can take no part in any question arising on this appeal.

And it is the practice of Appellate Court, a practice obviously correct, not to decide questions of constitutional law, unless absolutely necessary, when for any reason the bench is not full or when in the particular case all the judges cannot sit and assist in the determination.

Briscal vs. Cane, Bank of Ky., 8 Pet., 118, S. C., q i d, 85. For the reason above given the decree below must be reversed and the cause remanded. Reversed.

42 I, Lewis Kinsey, clerk of the Supreme Court of Iowa, do hereby certify that the foregoing pages contain a full, true and complete copy of the opinion in the case to which it refers; as full, true and complete as the same now remains on file in my office.

Witness my name and the seal of said court hereto affixed. Done at the city of Des Moines this 13th day of July, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk*.

43

NATHANIEL McCLURE *et al.*,
vs.
S. G. OWEN *et al.*

The complainants state that since the filing of the original bill in this cause, the county judge of this county as of all the counties of this State, were by law suspended in their official duties as charged in complainant's bill, by the creation of a board of supervisors; they therefore pray that the board of supervisors of said Washington county may be made parties def't in the room and place of the honorable the county judge of said county.

PATTERSON & SHERMAN,
Att'y for Pl'ffs.

The above motion was filed in the office of said clerk on the 24th day of Sept., 1866.

44 N. McCLURE *et al.*
vs. } 63.
S. G. OWEN *et al.*

SEPT. 24, 1866.

Now this cause is heard upon motion to make the board of supervisors of Washington county, Iowa, party defendant; which motion is sustained by the court. Lewis & Bennett appear for said board of supervisors, and the said board are to answer within 30 days.

N. McCLURE *et al.*
vs. } 63.
S. G. OWEN *et al.*

JANUARY 29*th*, 1867.

Now this cause is continued by agreement of parties.

N. McCLURE *et al.*
vs.
S. G. OWEN *et al.*

SEPTEMBER 17*th*, 1867.

Now this cause is submitted to the court.

45 State of Iowa, Washington D. C., January term, 1867.

Supplemental answer.

McClure & others
vs.
Owen & others. } 647. In equity.

The said defendants, this Miss. & Mo. Railroad Company, Clark Durant, Joseph E. Sheffield
and file this supplemental and additional answer in addition to their former and amended answer, say, that since their last answer was filed the said suit of Clark Durant vs. The County of Washington, which was taken by the county of Washington to the Supreme Court of the United States, has been dismissed, and the said judgment of the District Court of the United States for the district of Iowa in favor of Clark Durant has been affirmed, and stands in force and unrecovered and unsatisfied.

And for further answer, that defendants say that they severally received said bonds, which are negotiable instruments, in good faith for value; that at the time they received the same the Supreme Court of the State of Iowa had decided that said bonds were valid, binding under the constitution and laws of the State of Iowa, and that any subsequent decision which holds these bonds, owned by the defendants who now hold them, void, irrecoverable, as being against the constitution and laws of the State of Iowa, as a violation of
46 that clause of the Constitution of the United States which provides that no State shall impair the obligation of contracts; and these defendants insist that they are entitled to be protected under the Constitution of the United States.

And they pray that said bill may be dismissed.

JAMES GRANT,
Att'y for said defendants.

State of Iowa, *Scott Co., ss:*

I, James Grant, declare on oath, that I am defendants' attorney and know the facts above in full to be true.

JAMES GRANT.

Subscribed and sworn to by J. Grant before me in my presence this 5th day of Jan., A. D. 1867.

Witness my hand and seal notarial.

[SEAL.]

S. F. SMITH,
N. P. Scott Co., Iawa.

47 In the Washington, Iowa, District Court.

McClure & others }
vs.
Owen & others. }

The said defendants, Clark Durant and others, in leave amend and add to their answer, and say:

1st. That on the day of 1867, by the judgment and consideration of the Circuit Court of the United States for the district of Iowa, then upon due process of law, received a further and other judgment upon the interest warrants of said bonds to the amount of seventy thousand six hundred fifty-two 37-100 (70,652 37) dollars; that in said action Clark Durant was plaintiff, and the county of Washington, of which said plaintiffs are tax-payers, of which county they are as to said of a copy is hereto annexed, and that said judgment is a complete bar to any relief in equity in this court.

GRANT & SMITH,
For defendants.

I, James Grant, attorney for said defendants, declare on oath, that I have read the foregoing amendment and know the facts therein stated to be true.

JAMES GRANT.

Subscribed and sworn to by J. Grant, before me in my presence, this 19th day June, 1867.

[SEAL.] S. F. SMITH,
N. P. Scott County, Iowa.

48 N. McClure *et al.* }
vs.
S. G. Owen *et al.* }

Comes now the board of supervisors of Washington county, Iowa. by their att'ys, and for answer to the petition herein filed, answering saith:

That they are informed and believe it to be true, that the exhibits and proceedings of the county otherwise are correctly set out; that all the allegations of facts set out therein are true.

That as far as the same presents questions of law, they submit to the court such decree and judgment as may be equitable.

LEWIS & BENNETT.
Att'ys for Board of Supervisors.

The above answer was filed in the office of said clerk on the 22 day of January, 1867.

49 Washington District Court.

Submission of cause on written argument.

McClure & others }
vs. } 467.
Owen & others. }

In this cause, this cause is submitted to the court in written argument may be decided in vacation as of this term. Plff. to submit his argument to other in 30 days, defendants to reply in 10 days, after service on them.

Sept. 17th, 1867.

PATTERSON & RHEINART,
Att'ys for comp't.
GRANT & SMITH,
For defendants who have answered.
LEWIS & BENNETT,
Att'ys for Treasurer and Board of Supervisors, Washington Co.

The above paper was filed in office of said clerk on the 17th day of Sept., 1867.

50 In Washington District Court, March term, A. D. 1868.

Petition for removal of this cause into the U. S. C. Court.

McClure }
vs. } 466.
Owen and others. }

Now comes Jos. E. Sheffield, Clark Durant, Jeremiah Gray, Wm. Newten, Richard Mortimer, H. B. Newton, Jno. M. Newton, administrators of John W. Newton, deceased, and aver that they are not residents and not citizens of the State of Iowa, and citizens of the United States; that the matter in dispute exceeds five hundred dollars; that they file herewith an affidavit of Jos. E. Sheffield in accordance with the act of Congress in such case made and provided.

They pray that the said above-entitled cause may be removed into the next Circuit Court of the United States to be held in the district where said suit is pending, to wit, the Circuit Court of the United States for the district of Iowa, at Des Moines. They offer herewith good and sufficient security for their entering in such court on the first day of its session, copies of all papers, pleadings, depositions, testimony and other proceedings in said suit, and to do such other acts as are provided in the act of Congress attending such removal.

GRANT, *for said Def't.*

Filed 24th March, 1868.

C. T. JONES,
Cl'k Dis. Court.

51 In District Court of Washington county, Iowa.

Affidavit Jos. E. Sheffield.

McClure
vs. } 467.
Owen and others.

I, Jos. E. Sheffield, being duly sworn, do state on oath that I am one of the defendants in the above-entitled cause; that the said suit now pending in said District Court of Washington county, Iowa; that it is a controversy between citizens of the State of Iowa and citizens of other States of the United States; that the matter in dispute exceeds the sum of five hundred dollars exclusive of costs; that I have reason to believe, and do believe, that from prejudice or local influence I will not be able to obtain in said State court.

JOS. E. SHEFFIELD.

Subscribed and sworn to by Jos. E. Sheffield, before me and in my presence, this 9th day of March, A. D. 1868.

SAMUEL B. GORHAM,
Notary Public, New Haven County, State of Conn.

State of Connecticut, *County of New Haven*:

New Haven, *March* 18*th*, 1868.

Subscribed and sworn to before me this date, by Jos. E. Sheffield.

[seal.] H. LYNDE HARRISON,
Notary Public.

Filed March 24, 1868.

C. T. JONES, *Clerk Dist. Ct.*

52 In District Court, Washington Co.

Motion to redocit.

McClure
vs. } 467. Equity.
Owen and others.

Now come Sheffield, Durant, Mortimer and others, parties defendants herein, and move that this above-entitled be redocited.

1st. Because the same has never been stricken from the docket.
2nd. Because it has not yet been heard tried or decided.
3d. Because it belongs righty upon the docket.

Apr. 27, '68.

GRANT & SMITH
Att'y for Def't above-named.

53 Washington Dist. Ct.

Bill of exceptions.

AMANDA McCLURE, executrix of N. McClure, *et al.*, *vs.* OWEN AND OTHERS. } 467.

And now, on this 28th day of Aprile, A. D. 1868, this cause came on be for hearing upon the petition and affidavit of Joseph E. Sheffield and other parties, defendant herein, for removal of said cause to the Circuit Court of the United States for the district of Iowa. Grant & Smith, for said def'ts named, and Patterson & Rheinart, for pl'ff, and Lewis & Bennett for board of supervisors, and said petition and affidavit are in the words and figures following, to wit:

In Washington District Court, March term, A. D. 1868.

Petition for removal of said cause into U. S. C. C.

McCLURE *vs.* OWEN AND OTHERS. }

Now come Jos. E. Sheffield, Clark Durant, Thomas Dunn, Jeremiah Gray, Wm. Newton, Richard Mortimer, H. B. Newton, deceased, and aver that they are non-residents and not citizens of the State of Iowa; that the controversy herein is in part between citizens of the State of Iowa and citizens of other States of the United States; that the matter in dispute exceeds five hundred dollars; that they file herewith an affidavit of Jos. E. Sheffield, in accordance
54 with the act of Congress in such case made and provided.

They pray that the said above-entitled cause may be removed into the next Circuit Court of the United States to be held in the district where said suit is pending, to wit, the Circuit Court [Court] of the United States for the district of Iowa, at Des Moines.

The offer here with good and sufficient security for their entering in said court, on the first day of its session, copies of all previous pleadings, depositions, testimony and other proceedings in said suit, and to do such other acts as are provided in the act of Congress authorizing such removals.

GRANT, *for said Def't.*

Filed 24th March, 1868.

C. T. JONES,
Cl'k Dist. Court.

55 In District Court of Washington County, Iowa.

Affidavit Jos E. Sheffield.

McClure
vs.
Owen and others. } 467.

I, Jos. E. Sheffield, being duly sworn, do state on oath that I am one of the defendants in the above-entitled cause; that the said suit is now pending in said District Court of Washington county, Iowa; that it is a controversy between citizens of the State of Iowa and citizens of other States of the United States; that the matter in dispute exceeds the snm of five hundred dollars exclusive of costs; that I have reason to believe, and do believe, that from prejudice or local influence I will not be able to obtain justice in said State court.

JOS. E. SHEFFIELD.

Subscribed and sworn to by Jos. E. Sheffield by me and in my presence this 9th day of March, A. D. 1868.

[SEAL.] SAMUEL B. GORHAM,
Notary Public, New Haven County, State of Con'ect.

State of Connecticut, *County of New Haven*:

New Haven, *March* 18*th*, 1868.

Subscribed and sworn to before me this date, by Jos E. Sheffield.

[SEAL.] H. LYND HARRISON,
Notary Public.

Filed March 24, 1868.

C. T. JONES, *Cl'k Dist. Ct.*

56 And after argument, the court refused to grant said petition, and this order is entered of record in the words and figures following, to wit:

Amanda McClure, executrix of
Nathaniel McClure, dec'd, *et al.*,
vs.
S. G. Owen *et al.*

And now, on this the 28th day of April, A. D. 1868, this cause came on for hearing on petition and affidavit of Joseph E. Sheffield, Clark Durant, Rachel Mortimer and others, defendants in said petition named, for the removal of said cause to the Circuit Court of the United States for the district of Iowa, and after argument it is ordered and adjudged that the said petition be not granted, to which said Sheffield and others except.

To all of which rulings, orders and judgment the said defendants named in said petition for removal except, and pray the court to sign this their bill of exceptions, which is now done the 28th day of April, 1868.

E. S. SAMPSON, *Judge.*

AMANDA MCCLURE, EX'X OF ESTATE OF NATHANIEL
McClure,
vs.
S. G. OWEN *et al.*

Now, on this day, this cause is ordered by the court to be re-docketed on motion of Mortimer et al., by Grant & Smith, their attorneys.

57 APRIL 28TH, 1868.

EXECUTORS OF MCCLURE *et al.*
vs. Equity.
S. G. OWEN *et al.*

And now, on this 28th day of April, 1868, this cause came on for hearing on petition and affidavit of Joseph E. Sheffield, Clark Durant, Rachel Mortimer and other defendants in said petition named for removal of said cause to the Circuit Court of the United States for the district of Iowa; and, after argument, it is ordered and adjudged that the said petition be not granted; to which said Sheffield and others except.

E. S. SAMPSON, *Judge.*

58 At an adjourned term begun on the 4th Monday of April, 1868, being an adjournment of the January term, 1868.

District Court of Washington county, Iowa.

Decree.

EXECUTORS OF N. MCCLURE *et al.*
vs.
THE BOARD OF SUPERVISORS AND TREASURER of Washington county, Mississippi and Missouri Railroad Company, Clark Durant, Thos. Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, and Richard Mortimer.

Be it remembered, that in this action, which was submitted to the court at the September term, 1867, upon final hearing, Mess. Patterson & Rheinart appearing for plaintiffs, Lewis & Bennett for the board of supervisors and treasurer, Grant & Smith for all the other defendants, who have answered upon the pleadings of the parties made of record in the case, and the agreed statement of facts filed January 29, 1867; and without other or further evidence, the court, after examination of all pleadings and evidence in the case, and having heard the argument of counsel, and being fully advised in the premises, finds the equity of the case with the plaintiffs.

59 It is therefore ordered, adjudged and decreed by the court, that the board of supervisors of said county of Washington, as well any successive board as the board as now constituted, or any officers or financial agents of the county who may have authority of

law to levy taxes, be perpetually enjoined, restrained and commanded to refrain from at any time levying any taxes whatever to pay the principal or interest due or to become due on any bonds issued by the county judge of said county on the 7th day of June, 1858, and the 26th day of July, 1858, to the Mississippi and Missouri Railroad Company, or issued to aid in the construction of the Mississippi and Missouri Railroad Company, or which may have been delivered to said company, its officers, or agents.

That the county treasurer of said county, his deputies and successors in office, be forever enjoined and restrained from proceeding in any manner to collect the taxes levied by the county judge of said county for the years 1858 and 1859, to raise money for the payment of interest on said bonds; that the holders of said bonds be forever prohibited from proceeding to collect said bonds by taxation upon the people or property of said county; that the temporary injunction heretofore herein granted be made perpetual, and that the defendants pay the costs of this suit.

May 28, 1868.

E. S. SAMPSON, *Judge.*

60 STATE OF IOWA, *Washington County*, *ss*:

I, C. T. Jones, clerk of the District Court in and for said county, do hereby certify that the foregoing is a full, perfect and complete transcript of the papers, pleadings, orders, decrees, proceedings and record entrys in said cause, as the same appears on file and of record in my office.

Witness my hand with the seal of said court at Washington, this 25th day of May, A. D. 1868.

[L. S.] C. T. JONES, *Cl'k D. C.*

61 Be it remembered, that heretofore, to wit, on the 12th day of April, 1860, there was filed in the office of the clerk of the District Court of Washington county, Iowa, by the plaintiff therein recorded, a bill in chancery, in the words and figures following, to wit:

STATE OF IOWA, *Washington County*, *ss*:

To the Hon. W. E. Miller, judge of said court, in chancery sitting:

Humbly complaining, showeth unto your honor, your orators, Nathaniel McClure, John Mather, Michael Hays, O. H. Prizor, and W. R. Nugent, who are, as well for themselves as for many other citizens and tax payers of Washington county too numerous to be here named and set forth, that they now are, and at the time of committing all the grievances hereinafter complained of were, residents and tax payers of said county, and as such are and have been interested in the correct administration of the affairs thereof by the several county officers therein, and particularly in matters connected with the claimed power to tax for the purposes herein stated.

Your orators further state that heretofore, to wit, on the 21st day

of November, 1853, pursuant to a proclamation issued by the
62 county judge of said county a vote was taken therein upon the proposition whether said county would aid in the construction of the Philadelphia, Ft. Wayne & Platte River railroad by said county subscribing one hundred thousand dollars stock in said road; that a majority of the votes cast at said election were in favor of said proposition; all of which will appear from a copy of the record of said court hereto attached, and which, with copies of the other proceedings hereinafter mentioned are marked "A," and made a part of this bill.

Your orators further show that subsequently, on the 7th day of August, 1854, pursuant to another proclamation of said county judge, another election was held in said county upon the proposition that said Washington county would rescind fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne & Platte River Air Line railroad at the special election held in November 1853, and that said Washington county will subscribe said fifty thousand dollars stock, when so rescinded, to the Mississippi and Missouri River railroad, and that there be county bonds issued therefore, &c., and that at said election a majority of the votes cast, according to the
63 canvass by the proper officers, were in favor of said proposition, and order entered in the county records to the effect that the same had been adopted, of which notice was given by publication in the Washington Argus for four successive weeks.

Your orators further represent that after this, on the 4th of August 1856, as required by a proclamation of the county judge, a third election was held upon the proposition whether the county would subscribe an additional fifty thousand dollars to the capital stock of the railroad company which shall first build a railroad from the Mississippi river to a point not exceeding three quarters of a mile from the courthouse in said town of Washington; that a majority of the votes were against this proposition, and that subsequently a fourth proclamation was issued, and on the 11th day of December, A. D. 1856, an election was held in said county to determine the following proposition: whether said county of would subscribe one hundred thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company to construct a railroad from Muscatine to Oscaloosa by the way of Washington, in said county of Washington, and that
64 according to [to] the returns of said election and the canvass of the votes cast a majority of said votes were in favor of said proposition. Your orators further represent that after this, to wit, on the 5th day of April, 1858, another vote was had in said county upon this proposition: whether the county of Washington would aid in the construction of the Mississippi and Missouri railroad by the subscription of one hundred thousand dollars in addition to the $50,000 already authorized to the capital stock of said railroad company; that this proposition, with its conditions and terms as stated in the proclamation, as shown by the returns and canvass, was adopted and notice given of the same.

They further represent that afterwards, on the 7th day of June, 1858, the bonds to the amount of fifty thousand dollars, as contemplated by the vote of the 7th of August, 1854, were issued by the county judge in sums of five hundred dollars each, and on the 26th of July, 1858, the bonds to the amount of one hundred thousand dollars, as contemplated by the vote of the 5th of April, 1858, were issued by the county judge in the sums of one thousand dollars each, and delivered to the said company, their officers, agents or attorneys, as and for their benefit and use.

65 It is further shown by your orator that, according to the proposition submitted and voted upon on the 7th of August, 1854, the bonds to be issued were to be payable within twenty years from their date, were to draw ten per cent. interest, and to pay the same a tax, not exceeding five mills on the dollar, was to be levied on the taxable property of said county, to continue annually, and after the expiration of fifteen years the rate of tax was to be increased so as not to exceed one per cent. on the dollar, said rate of tax to be continued until said bonds, with their interest, should all be paid.

The proposition voted upon on the 5th of April, 1858, contains similar provisions in this respect, except for the first fifteen years the per cent. to be levied to meet the interest was not to exceed three mills on the dollar. The proposition for the $50,000 further provided that the company should receive said bonds at their par value in payment of stock, and that they should only be issued upon this condition, and the further one, that they should only issue as fast as the work progressed toward completion within the limits of said
county, and the manner of voting, as directed, was that those
65 in favor of said proposition should write or print on their ballots "For the stock, tax and rescinding," and those opposed should, in like manner, write or print on their ballots "Against stock, tax and rescinding." In the proposition last submitted and voted upon, the manner directed for taking the vote was that the voters should have written or printed on their ballots "Railroad stock and tax, yes," or "Railroad stock and tax, no," and it was therein provided that the bonds should not issue unless said company should give to the county good and sufficient security, approved by the county judge, in the sum of $200,000, conditioned that said railroad should be completed and in good running order to the town of Washington, in said county, by the 1st of September, 1858, and that a depot should be permanently established not more than one-half mile from the court-house in said town, and not then unless said company would take said bonds at their face in payment for stock in said road, to be issued direct to the county.

Your orators further represent that, for the year 1858, the county judge of said county levied a tax of four mills on the dollar upon all
the taxable property of said county for the purpose of meet-
67 ing the interest due or to become due on said bonds, the said interest, according to the terms of the bonds, being due semi-annually, on the 1st of July and 1st of January in each year; and for the year 1859 a further tax of four mills on the dollar, to meet the interest for the year; that this tax for these years was levied

upon the property of your orators, in common with that of all the other property in said county; that a portion of the tax thus levied has been paid by the tax-payers of said county, but that a large proportion, including that levied upon the property of your orators, remains unpaid and uncollected.

Your orators further represent that the amount of said tax remaining unpaid, as assessed upon their property and that of those who have a common interest with them, and for whom as well as themselves they file this bill, amounts to a large sum, to wit, at least the sum of one thousand dollars; that the county treasurer of said county, Samuel G. Owen, is proceeding to collect said tax, and threatens to, and unless restrained by the process of this court, will proceed to collect it by seizing the property of your orators and selling the same at public auction; that the county judge of said county
68 intends, and as they are informed and believe will unless restrained by this court, levy a further tax for the year 1860, and so on for each succeding year, to meet the interest due on said bonds for said several years; that they have refused to pay said tax, and have frequently in a friendly manner protested to said officers against their right or power to levy and collect said tax, and that they have made known to them in the same manner their right to be protected in their property against any and all such unlawful taxation and seizure; that said officers, impelled by what, as they state, they regard their duty, persist in their determination to levy and collect said tax by all the means, violent or otherwise, conferred upon them by the laws of the State, and have hence avowed their determination to continue to levy said tax, and if necessary make the same by distress and sale of the property of your orators from time to time as the said tax is levied and remains unpaid.

Your orators charge that the levy of said tax is illegal and unwarranted; that its collection is without authority or warrant of law; that they were all opposed to said several propositions, and those voting voted against the same; that the injury about to be inflicted upon them and their property is irreparable; that the collec-
69 tion of said tax can only be resisted at law, and they can only be remedied in such a tribunal by resorting to an innumerable number of suits, and they therefore invoke the aid of the chancellor to the end that their property may not be sacrificed by the officers without authority of law, and that they may not be driven to bring a multiplicity of suits to settle and adjudicate their rights in the premises.

And your orators that the illegality of the proceedings aforesaid, and their right to be relieved from this onerous taxation, may be more clearly seen, make the following charges and specifications, that is to say:

First. That, as they are informed and believe, the proposition for the tax voted upon Aug. 7, 1854, was not submitted in the manner required by law, containing, as it did, a proposition to rescind a portion of a proposition previously adopted, and one for stock and tax at the same time; and thus, instead of submitting a single or one question, it submitted a double proposition or two questions, for which there is no warrant of law.

Second. As shown by the record attached, the bonds were to be issued on the stock subscribed to the Mississippi and Missouri railroad, when, as they are informed, the subscription was made
70 and the bonds issued to a company pretending to have that
name.

Third. By the action of the railroad company, through their executive committee, of date 14th June, 1858, certificates of stock were directed to be issued on the Oskaloosa division of the road of said company to the amount of fifty thousand dollars, to Washington county, in full payment for the bonds of said county; whereas the stock was, by the proposition voted upon, to be in the whole company, and not a particular division; and any stock issued otherwise than as directed by said executive committee is, as far as they know, without authority and invalid.

Fourth. The proposition submitted and voted upon on the 5th of April, 1858, contained a condition, as hereinbefore shown, that the bonds were not to issue unless said company should give good and sufficient security for the completion of the road as therein stated; whereas they charge that, as appears by the record, no such security was given, but said bonds were issued without a compliance on the part of the company with this condition of the proposition.

Fifth. At the time of submitting these propositions and taking said votes the constitution of this State, as they are informed and believe, gave no authority to the counties of this State, whether the same was claimed through legislative sanction or otherwise, to
71 issue bonds, subscribe stock, and levy taxes for any such purpose as that contemplated and provided for by said propositions.

Sixth. The legislature of this State had not at that time, nor since, conferred the power upon Washington county, its officers or agents, to take stock in a municipal capacity in any such company, nor to issue bonds for any such purpose, nor had said county, its officers or agents, any authority under the law to levy the said taxes for said purpose.

Seventh. The attempt of said officers to levy and collect said tax, under color of the proceedings stated, is without legal or constitutional sanction, and in proceeding to levy and collect the same, they are transcending the authority they possess as agents, who are limited and confined in their powers by the law constituting and creating them.

Eighth. Said bonds were issued to said railroad company, their agents or attorneys, who had full knowledge of all the circumstances of said votes, and who took the same with full notice of the defects and irregularities complained of; and these bonds have not, to their knowledge, been transferred, and if transferred, then they charge that the holder or holders had full knowledge and notice of the want of power in the county to issue the same, if not of the irregularities stated as aforesaid, and that they had notice of said irregular-
72 ities. They also charge.

Ninth. By the terms of the proposition submitted Aug. 7, 1854, the bonds were only to be issued as fast as the work progressed toward completion in said county of Washington, and yet your orators charge that they were issued long before any considerable portion of said work was done; and that at this time less than one-half of the road has be constructed, and that all the work on the same has ceased, the company, as far as your orators know, doing nothing toward prosecuting the same to completion through said county.

Tenth. Said bonds are payable, principal and interest, in New York city, a place at which the county judge, as they are advised, had no power to make the same payable, the law knowing no other place at which the county is to pay its indebtedness than the treasury thereof.

In consideration of all the premises, and forasmuch as your orators are remediless according to the strict rules of the common law, but are only relievable in this court, where such matters are properly triable, they pray that Samuel G. Owen, the treasurer and collector of said county, S. P. Young, the county judge, and the holders of said bonds, when ascertained and known, may be made parties respondents to this bill; that they answer all and singular 73 the matters herein stated as fully as if they were again specifically interrogated in relation to the same, and that your honor may grant an injunction herein, and that a writ may issue from under the seal of this court, commanding and restraining the said Samuel G. Owen, his agents, deputies, or successors, from further proceeding to collect the tax levied as aforesaid; that they may be restrained and enjoined from further proceeding to seize the property of your petitioners, or those for whom this proceeding is instituted, from which to make said taxes, or any part thereof, by levy or sale; also commanding and restraining the said S. P. Young and his successors in office from levying or directing the levy of any taxes for the year 1860, or any subsequent year, to pay the principal or interest due, or to become due on said bonds so issued as aforesaid; and the holders of said bonds, when ascertained, from proceedings to collect the same by taxation upon your orators or their property; that upon a final hearing your honor will direct that said respondents may be perpetually enjoined and restrained from collecting said tax, or the levy of others, as well as the collection of said bonds in the manner attempted and contemplated by the votes aforesaid, and that your honor will grant them such other and further relief as to you may seem meet and proper, consistent with equity, good con- 74 science, and the law made [made] herein, and in duty bound will ever pray, &c.

PATTERSON, SCOFIELD & WRIGHT,
Sols. for Petitioners.

STATE OF IOWA, *Washington County:*

Nathaniel McClure, John Mather and Michael Hays, being duly sworn upon their oaths, say, that the matters and things stated in the foregoing petition, so far as they are stated as of their own knowledge, are true, and so far as they are stated on the information of others, they verily believe them to be true.

NATHANIEL McCLURE.
MICHAEL HAYES.
JOHN MATHER.

Sworn and subscribed to before me this 10th day of April, A. D. 1860.

[SEAL.] A. H. PATTERSON,
Notary Public.

75 467.—*Exhibit A.*

Exhibit (A) refered to in the foregoing bill and made a part of the same:

STATE OF IOWA, *Washington Co.*, *ss:*

Be it remembered, that on the 17th day of Oct., A. D. 1853, the County Court of said county ordered a special election to be held in said county, on the 21st day of Nov., 1853, at the usual place of holding election in said county, for the purpose of taking a vote for and against the county of Washington, in the State of Iowa, subscribing one hundred thousand dollars stock in the Philadelphia, Ft. Wayne and Platt River Air Line railroad, whereupon the sh'ff of said co. was ordered to post, according to the 115 section of the code, the following notice, to wit:

STATE OF IOWA, *Washington Co.*, *ss:*

Whereas at a mass-meeting of the citizens of said county, held in Washington, on the 8th day of Oct., 1853, there was a resolution passed requesting the county judge of said co. to submit a proposition for said county to take railroad stock: Therefore I, Enoch Ross county judge, do hereby order that there be a special election held in said county, at the usual place of holding elections, on the 21st day of Nov., 1853, for the purpose of taking a vote for and against the following proposition, to wit: That the co. of Washington will aid in the construction of the Phila., Ft. Wayne and Platt River 76 railroad, by said co. subscribing $100,000 dollars stock in said road, and that the co. judge of said co. issue co. bonds therefor, bearing interest at a rate of not more than six per cent. per annum, and payable within 20 years from date, and that there be a tax of five mills, if necessary, on the dollar of the taxable property of said co., levied from year to year, for the purpose of paying the interest on said bonds, and that after fifteen years, the rate of tax be increased to one per cent., if necessary, for the purpose of paying off said bonds, said rate of tax to continue until principal and interest is all paid, and that said bonds shall not be negotiated at a greater discount than 5 per cent. on the dollar, and that said bonds shall not be issued untill there is a reasonable certainty of the completion of said road, and then only as the work or that part of said road within the limits of s'd co. progresses toward completion. Said election to be governed in all respects by the election laws in the code, and the manner of voting on said proposition shall be by ballot. Those in favor of said proposition will vote railroad stock and tax, and those opposed will vote no railroad stock and tax.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at Washington, this 17th day of October, 1853.

ENOCH ROSS, *Co. Judge.*

77 And that I, Enoch Ross, co. judge of said co., from the returns made by Wm. P. Organ, sheriff of said co., and the judges and clerks of elections from the several townships in said county, with the poll-books of said election, am fully satisfied that the above and foregoing notices and propositions has been posted according to law, and that the requirements of the 115 section of the code has been fully and fairly complied with, and that a majority of the votes cast at said election are in favor of said proposition, and the result is as follows, to wit:

STATE OF IOWA. *Washington Co., ss:*

Abstract of votes poled at an election held in said county on Monday, the 21st day of Nov., A. D. 1853, for railroad stock and tax and against railroad stock and tax.

We, the undersigned, two justices of the peace, and the co. judge of said co., do hereby certify that the above is a true abstract of the votes polled at an election held in said county on Monday, the 21st day of November, A. D. 1853, on a proposition for said county to take stock in the Phila., Ft. Wayne and Platt River Air Line railroad, as appears from the poll-books returned from the several townships in said county, and this day cancelled by us.

In witness whereof we have hereunto set our names, with the seal of said county hereunto affixed, at Washington, this 28th day of Nov., 1853.

NORMAN EVERSON,
THOMAS McMILLAN,
Justices of the Peace.
ENOCH ROSS, *County Judge.*

78 STATE OF IOWA, *Washington County, ss:*

To the voters of said county:

Whereas the County Court of said county has been petitioned by several hundred voters of said county, asking said court to order a special election for the purpose of rescinding fifty thousand dollars of the stock voted to the Philadelphia, Fort Wayne and Platt River Air Line railroad, at the special election held in said county in November, 1853, and subscribe the same to the Mississippi and Missouri railroad:

Therefore it is hereby ordered by the County Court of said county, that there be a special election held in said county, at the usual place of holding elections in the several townships in said county, on Monday, the 7th day of August, 1854, for the purpose of taking a vote for and against the following propositions, to wit:

That said Washington county will rescind fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne and Platt River Air Line railroad, at the special election held in November, 1853, and that said Washington county will subscribe said fifty thousand dollars stock when so rescinded to the Mississippi and Missouri River railroad, and that there be county bonds therefor bearing interest at a rate not greater than ten per cent. per annum, and payable in twenty
79 years from date, and that there be a tax of five mills on the dollar,
if necessary, levied on the taxable property of said county from year to year, for the purpose of paying the interest on said bonds annually, and after the expiration of fifteen years the rate of tax be so increased as not to exceed one per cent. on the dollar, if necessary, for the purpose of paying off said bonds, said rate of tax to be continued until said bonds with the interest is all paid, unless said bonds be otherwise disposed of, and that said bonds shall not be issued, except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of stock in said railroad, and then only as fast as the work progresses towards completion within the limits of said county; said election will be governed by the election laws contained in the code of Iowa, and the manner of voting on said proposition shall be by ballot, and those in favor of said proposition shall write or print on their ballots for stock tax and rescinding; and those opposed shall write or print on their ballots against stock tax and rescinding and if a majority of the votes cast at said election be in favor of said proposition, the same shall be considered as adopted, and the county judge of said county authorized to subscribe said stock and issue bonds; and it is further ordered that the foregoing propositions be published in the Washington Argus for four weeks in
80 succession before said election, and that there be a copy of
said propositions posted up the place of voting in each township during the day of election.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at Washington, this 30th day of June, 1854.

[SEAL.] ENOCH ROSS,
County Judge of said County.

I, Enoch Ross, county judge of said Washington county, being satisfied that the foregoing notice required by 115 section of the code of Iowa has been fully and substantially complied with, and there being a majority of two hundred and ninety votes in favor of said propositions, which is as follows, to wit:

Therefore said propositions are hereby declared to be adopted, and it is hereby ordered that the following notice be published for four weeks in succession in the Washington Argus, to wit:

STATE OF IOWA, *Washington Co.*:

To the voters of said county, greeting:

You are hereby notified that the propositions for to rescind fifty thousand dollars of the railroad stock voted to the Philadelphia, Ft.
Wayne and Platt River Air Line railroad, at the special election
81 in November, 1853, and subscribing the same to the Mississippi
and Missouri railroad, and issue bonds therefor, &c., has been adopted by a majority of two hundred and ninety votes.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, at Washington, this 29th day of August, 1854.

[SEAL.] ENOCH ROSS, *County Judge.*

I, L. F. Walden, do hereby solemnly swear that I published a notice of the result of the foregoing election, to rescind and take railroad stock as above stated, above four weeks in succession in the Washington Argus, a weekly newspaper published in the town of Washington, State of Iowa.

LEWIS F. WALDEN.

Subscribed and sworn to before me this 3d day of October, 1854.

ENOCH ROSS, *County Judge.*

STATE OF IOWA, *Washington County, ss:*

Whereas a respectable number of the voters of said county have petitioned to have the question submitted to take $50,000 additional in the capital stock in the railroad company that first build a railroad from the Mississippi river to the town of Washington, now, therefore, it is hereby ordered that there be an election held in said
county, at the respective places of holding elections in the
82 several townships on the day of next general election, to wit,
on the 4th day of August, 1856, for the purpose of deciding said question. Should a majority of the votes polled on said proposition be in favor thereof, then the said county judge will be authorized, and it shall be his duty, in behalf of said county, to subscribe to the capital stock of the railroad company which shall first build a railroad from the Mississippi river to a point not exceeding three-quarters of a mile from the court-house in said town of Washington said sum of fifty thousand dollars additional to any amounts heretofore voted, and in payment of said subscription said judge will be further—

The above proposition was voted down at the election aforesaid.

To the voters of Washington county:

Having been petitioned by several hundred of the voters thereof to submit to the popular vote of said county, at a special election to be called for that purpose, a proposition for Washington county to subscribe one hundred thou dollars to the capital stock of the Mississippi and Missouri Railroad Company to construct a railroad from Muscatine to Oskaloosa, by way of Washington, in said Washington county:

Now, therefore, I, John T. Burris, judge of said county, hereby order that there be an election held in said county at the
83 respective places of holding elections in the several townships thereof, on the 11th day of December, A. D. 1856, for the purpose of deciding said question. Should a majority of the votes cast at said election be in favor of said proposition, and should said railroad company have said railroad fully completed and in running order from Muscatine to the town of Washington, on or before the 1st day of December, 1857, then the county judge will be authorized to subscribe, in behalf of said county, one hundred thousand dollars to the capital stock of said company, in addition to the amount heretofore voted by said county to the stock of said company, and said judge will be further authorized, in payment of said subscription, to issue the bonds of Washington county to the amount of one hundred thousand dollars, made payable to said railroad company twenty years after the date thereof, with interest thereon at the rate of eight per cent. per annum, payable semi-annually; said stock to be subscribed and said bonds to be issued upon the completion of said railroad from Muscatine to Washington, provided that portion of road shall be so completed by said 1st day of December, 1857, but if that portion of said road shall not be so completed by said date, then said stock shall not be subscribed, nor bonds issued, time being the essence of this agreement. If said portion of said road shall be completed
84 as above provided, and said stock subscribed, and bonds issued, then for the purpose of paying the interest thereon and liquidating said bonds, when the same shall become due, there shall be levied such annual tax not exceeding one per cent. upon the taxable property of the county as may be necessary therefor; said tax to be continued from year to year until the whole amount of both principal and interest shall be fully paid; said election will be governed by the election laws in the code of Iowa, the vote being by ballot. Those in favor of said proposition will have on their ballots "more railroad stock and tax." Those opposed will have on their ballots "no more railroad stock and tax."

In testimony whereof I have hereunto set my hand and affixed the seal of said county. Done at Washington, this 10th day of November, A. D. 1856.

[SEAL.] JOHN T. BURRIS, *Judge of said County.*

I, John T. Burris, county judge of said Washington county, being satisfied that the preliminary notice required by the 115 section of the code of Iowa has been fully and substantially , and that there being a majority of three hundred and forty-five votes in favor of said proposition, which vote is, as follows, to wit:

85 Therefore the said proposition is hereby declared to be adopted, and it is hereby ordered that the following notice be published, for four weeks in succession, in the Washington Press, a weekly newspaper published in said county.

STATE OF IOWA, *Washington County.* *ss:*

To the voters of said county, greeting:

You are hereby notified that the proposition to take $100,000 (one hundred thousand) more railroad stock and tax in the Mississippi and Missouri Railroad Company, at the special election held on the 11th day of December, 1856, and that the bonds be issued for the same on the first day of Dec., 1857, provided that said railroad company complete the said road, and have the same in running order to the town of Washington by the first day of Dec., 1857, has been adopted by a majority of three hundred and forty-five votes.

In witness whereof I have hereunto subscribed my name and affixed the seal of said county, at Washington, this 27th day of Dec'r, 1856.

ALBERT ALLEN,
Clerk and Ex-officio County Judge.

86 STATE OF IOWA, *Washington County*, *ss*:

To the voters of said county:

Whereas the county judge of said county has been petitioned by a respectable number of the voters of said county to submit a proposition to said county to take 100,000 dollars additional stock in the Mississippi and Missouri River Railroad Company: Therefore it is hereby ordered, that a poll be opened in the several townships in said county, on Monday, the 5th day of April, 1858, for the purpose taking the votes for and against the following proposition, to wit:

That the county of Washington, in said State, will aid in the construction of the Mississippi and Missouri railroad, by the subscription of one hundred thousand dollars, in addition to the 50,000 dollars already authorized to the capital stock of said railroad company, and that the bonds of said county be issued in payment of said stock, bearing interest at the rate of ten per cent. per annum, payable in twenty years from date, and that there be a tax of not more than three mills on the dollar levied on the taxable property of said county from year to year, for the purpose of paying the interest on said bonds, and after the expiration of fifteen years that the tax be so increased as not to exceed ten mills on the dollar, for the purpose of paying off said bonds, said tax to continue from year to year
87 until said bonds are all paid off, unless said bonds be otherwise disposed of; said bonds not to be issued unless said company give to said county good and sufficient security, approved by the county judge, in the sum of 200,000 dollars, conditioned that said road be completed and in good running order to the town of Washington, in said county and State, by the 1st day of September, 1858, and that a depot be permanently established not more than one-half mile from the court-house in said town of Washington, and not then unless said company take said bonds at their face in payment for stock in said road. Said stock to be issued direct to the county; said election to be governed by the election laws of the State of Iowa

and those in favor of said proposition shall write or print on their ballots "Railroad stocks and taxes, Yes," and those opposed to said proposition shall write or print on their ballots, "Railroad stock and tax, No;" and if a majority of said votes be in favor of said proposition, the same shall be considered as adopted, and the county judge shall be authorized to subscribe said stock and issue said bonds; and it is hereby further ordered, that the foregoing proposition be published in the Washington Press for four weeks in succession before said election.

In witness whereof I have hereunto set my hand and affixed the seal of said county at Washington, this 1st day of March, A. D. 1858.

S. P. YOUNG, *County Judge.*

88 STATE OF IOWA, *Washington County*, *ss*:

I, S. P. Young, county judge of said Washington county, being satisfied that the foregoing notice, required by the 115 section of the code of Iowa, has been fully complied with, and there being a majority of five hundred and eighty-eight votes in favor of said proposition, which vote is as follows, to wit:

Therefore the said proposition is hereby declared to be adopted, and it is hereby ordered, that the following notice be published for four weeks in succession in the Washington Press, a weekly paper published in said county, to wit:

STATE OF IOWA, *Washington Co.*, *ss*:

To the voters of said county, greeting:

You are hereby notified that the proposition to take one hundred thousand dollars additional railroad stock in the Mississippi and Missouri Railroad Company, at the election held on Monday, the 5th day of April, 1858, was adopted by a majority of five hundred [hundred] and eighty-eight votes.

In witness whereof I have hereunto subscribed my name and affixed the seal of said county at Washington, this 13th day of April, A. D. 1858.

[SEAL.] S. P. YOUNG, *County Judge.*

89 Now this 26th day of July, 1858, comes Henry Farnam and asks the court to issue the bonds of Washington county, State of Iowa, to the amount of (100,000) one hundred thousand dollars in payment of the stock of the Mississippi and Missouri Railroad Company, authorized by a vote of the people of said county, at an election held on the 5th day of April, A. D. 1858, a proposition having been submitted to them, as authorized by the laws of the State of Iowa, and the court being satisfied that the notice of the adoption of said proposition was published for four weeks in succession, as required by law, all things in relation thereto being duly considered: Therefore it is hereby ordered, that the bonds of said Washington

co., State of Iowa, be issued to the amount of one hundred thousand dollars ($100,000) in payment for the same amount of stock in said road, said bonds to be in sums of one thousand dollars each, bearing interest at the rate of ten per annum, payable semi-annually on the first days of January and July, in each year, dated July first, 1858, the principal payable in twenty years from date, said bonds to be numbered from one to one hundred. The blank hereto attached is a sample of the bonds to be issued under this order, said bonds made payable at the Corn Exchange Bank, in the City of New York.

S. P. YOUNG, *County Judge.*

JULY 26TH, 1858.

In compliance with the above order and as thence directed
90 the bonds of Washington county are issued to the amount of one hundred thousand dollars ($100,000) and delivered to Henry Farnam, agent for said Mississippi and Missouri Railroad Company, receiving from said company their bond, under their corporate seal, binding said company to comply with the conditions of the proclamation, which said bond is recorded in the recorder's office of said Washington co., and a certificate of stock which reads as follows, to wit:

No. 252. Mississippi and Missouri Railroad Company. 1000 shares.

This certifies that Washington county, Iowa, entitled to one thousand shares of one hundred dollars each in the Mississippi and Missouri Railroad Company, transferable in person or by attorneys on the books of the company, at the office of the treasurer, in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate. Interest at the rate of ten per cent. per annum will be allowed an all full paid stock until this division is completed, payable in stock.

In witness whereof the said company have caused this certificate to be signed by their president and treasurer. Dated at the treasurer's office, in the city of New York, this 26th day of July, 1858.

JOHN A. DIX, *President.*
A. C. FLAGG, *Treasurer.*

91 $100. United States of America, State of Iowa, county of Washington.

The county of Washington, for and in consideration of ten shares of one hundred dollars each of the capital stock of the Mississippi and Missouri Railroad Company, promise to pay (inserted James Dawson) or bearer, the sum of one thousand dollars on the first day of July, 1878, with interest thereon, at the rate of ten per cent. per annum, payable semi-annually on the first day of January and first day of July, each year, principal and interest, payable at the Corn Exchange Bank, in the city of New York, and the faith of said county of Washington is hereby pledged for the semi-annual payments of interest, and the ultimate redemption of principal.

I, Samuel P. Young, county judge of the county of Washington, do hereby certify that by a vote of the legal electors of said county, at an election held on the fifty day of April, 1858, in accordance with a proposition submitted to them according to the laws of the State, the county judge of Washington county was authorized to subscribe one hundred thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, and issue county bonds to the same amount, in payable in twenty years, and bearing interest at the rate of ten per cent. per annum, and that the above is
one of one hundred bonds of one thousand dollars each, num-
92 bered from one to one hundred, given for said subscription.

In testimony whereof I have hereunto set my hand and seal of said county, this .

The county of Washington, Iowa, will pay the bearer, at the Corn Exchange Bank, in the city of New York, on the first day of January, 1860, fifty dollars for interest due that day on Bond No. .
$50.

——— ———

County Judge.

Comes now June 7th, 1858, John A. Dix, president of the Mississippi and Missouri Railroad Company, and asks the court to issue the bonds of Washington county, Iowa, to the amount of $50,000, (fifty thousand dollars,) which amount the county judge of said county was authorized to issue in payment of stock in said railroad company by a vote of the people of said county of Washington, State of Iowa, taken on the seventh (7) day of August, 1854, a proposition having been submitted to them, in accordance with the laws of the State of Iowa; and the County Court being of opinion that said railroad company having sufficiently complied with the conditions in said propositions to entitle them to receive said bonds, and said Dix having on the part of said company pledged himself, in case said bonds cannot be so negotiated as to enable said company to complete said road by the first day of September, 1858, then said bands are to be re-
turned and delivered into the possession of co. judge of
93 said county; therefore it is thereby ordered that the bonds
of Washington county, State of Iowa, be issued to the amount of fifty thousand dollars, (50,000,) in sums of five hundred, ($500;) each numbering from one to one hundred, bearing interest at the rate of ten per cent. per annum, payable semi-annually on the 1st day of January and July in each year, at the Corn Exchange Bank, in the city of New York, dated July 1st, 1858. The blank hereto attached is a sample of said bond.

S. P. YOUNG,
County Judge.

In compliance with the above order, and as therein directed, the bonds of Washington county are issued and this day delivered to Henry Farnham, as agent for said Mississippi and Missouri Railroad

Company, and receiving from said bonds the following as the action. of the executive committee:

OFFICE OF THE MISSISSIPPI & MISSOURI RAILROAD COMPANY,
New York, 14*th June*, 1858.

At a meeting of the executive committee of this company, it was resolved that a certificate of stock on the Oskaloosa division, for fifty thousand dollars, be issued to Washington county, Iowa, in full payment for the same amount of the bonds of said county to be issued in conformity to the vote of the people of said county on the 7th August, 1854.

I certify the foregoing to be a true copy of a resolution adopted by the executive committee of this company.

JOHN A. DIX, *President*.

94 Mississippi and Missouri Railroad Company.

This certifies that Washington county, Iowa, is entitled to five hundred (500) shares of one hundred dollars each in the Mississippi and Missouri Railroad Company, transferable in person or by attorney, on the books of the company, at the office of the treasurer, in the city of New York, or at any transfer agency established by company, only the surrender of this certificate.

Interest at the rate of ten per cent. per annum will be allowed on all fully paid stock until this division is completed in stock.

In witness whereof, the said company have caused this certificate to be signed by their president and treasurer, dated at transfer office, in the city of New York, this 14th day of June, 1858.

JOHN A. DIX, *President*.
A. C. FOGG, *Treasurer*.

And now, on this 21st day of Feb., 1859, received by mail the following, it being the interest due on the first day of January, 1859, on the certificate of stock belonging to Washington county:

No. 396. Mississippi & Missouri Railroad Company. 75 shares.

This certifies that the county of Washington, Iowa, is entitled to seventy-five (75) shares of one hundred dollars each in the Mississippi and Missouri Railroad Company, transferable in person or by attorney, on the books of the company, at the office of the treasurer, in
95 the city of York, at any transfer agency established by
said company, only the surrender of this certificate.

STATE OF IOWA, *Washington County*:

The clerk of the District Court of said county will issue an injunction as pray for in the foregoing petition, the petitioners giving bond to your approval, payable to said county in a penalty of three thousand dollars.

Given under my hand this 10th of April, 1860.

WILLIAM E. MILLER,
Judge of 8th Judicial Dist..

Which bill is indorsed as follows :

Nathaniel McClure & others vs. Owen & Young, as treas. and co. judge, and others. Petition for injunction, filed April 12, 1860. Ralph Dewey, cl'k. Patterson & Scofield, and others, for petitioners.

96 And afterwards, to wit, on the 12th of April, 1860, there was filed in the office of the clerk of the said District Court a bond in words and figures following, to wit:

Know all men by these presents, that we, the undersigned, acknowledged ourselves held and firmly bound unto the county of Washington in the penal sum of three thousand dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. The condition of this obligation is as follows: Whereas the undersigned, Nathaniel McClure and others, petitioners, have this day procured from the Hon. William E. Miller an order for a preliminary injunction against Samuel G. Owen, co. treasurer, S. P. Young, county judge of said county, and the holders of the county bonds of said county, issued for railroad purposes, restraining them from the collection of the taxes levied for the purpose of paying the bonds aforesaid and the interest thereon, and from levying taxes hereafter for the same purpose, as also the holders of the bonds from the collection of the same.

Now if the said petitioners shall upon the final hearing of said cause pay all damages which may be adjudged against 97 them by reason of such injunction, then the foregoing obligation to be void, otherwise to be and remain in full force and virtue.

In testimony whereof we have hereunto set our hands, this 10th day of April, 1860.

NATHANIEL McCLURE.
JOHN MATHER.
MICHAEL HAYES.
A. W. CHILCOTE.
CALVIN CRAVEN.
ISAAC VAN NOSTRAND.
JOHN F. VANDYKE.
WM. H. JENKINS.
JOHN BRYSON.

Which bond is endorsed as follows : Nath. McClure vs. S. G. Owen, treas., and others. Bond. Approved and filed Apr. 12, 1860. Ralph Dewey, cl'k.

98 And afterwards to wit, on the 27th day of April, 1860, there was filed in the office of said court a writ in the words and figures following, to wit :

STATE OF IOWA, *Washington County:*

The State of Iowa to Samuel G Owen, treas., and Samuel P. Young, judge of said Washington county, or their successors in office:

Whereas Nathaniel McClure, Michael Hayes, John Mather, O. H. Prizer and W. B. Nugent, who represents themselves as suing, as well for a great number of residents and property holders of said Washington co., too numerous to be mentioned, as for themselves, did on the 12th day of April, 1860, filed in the office of the clerk of the District Court of said county their bill in chancery pray-
99 for general as well as specific relief, and whereas by an endorsement written on the back of said petition, under the sign manual of the Hon. Wm. Miller, sole presiding judge of the District Court of said Washington county, at its April term, 1860, the undersigned is ordered and required upon the filing by said complainants in the office of the clerk of said court a good sufficient penal bond in the sum of three thousand dollars, with sureties to be by me approved, to issue from said office a writ of injunction prohibiting certain of the defendants in said bill from doing and performing certain acts therein mentioned, and the said complainants having fully complied with the conditions of said order:

Now, therefore, you the said Samuel G. Owen, treasurer, and you the said Samuel P. Young, judge of said Washington county, and the successor or successors in office of each of you, are hereby strictly enjoined and prohibited from doing the following acts, that is to say: you the said treasurer are enjoined and prohibited from collecting or in any manner receiving any tax, now or hereafter levied for
100 the purpose of paying interest or principal on the bonds issued by said Washington county to the Mississippi and Missouri Railroad Company, and you the said county judge are in like manner enjoined and prohibited from levying any more taxes in said county for the payment of said bonds, principal or interest, and the commands of this writ you are in no wise to disregard, under penalty of the law.

Witness Ralph Dewey, clerk of said county, with the seal thereof hereto attached, at Washington, this 27th of April, A. D. 1860.

RALPH DEWEY, *Cl'k.*

We acknowledge due and proper service of this writ on this 27th day of April, 1860.

S. P. YOUNG, *County Judge.*
SAMUEL G. OWEN, *Treasurer.*

101 *Notice.*

STATE OF IOWA, *Washington County, ss* :

The State of Iowa to Samuel G. Owen, treas. of Washington co., Iowa, Samuel P. Young, county judge of said co., and the Mississippi and Missouri Railroad Company:

You and each of you are hereby notified that there is now on file in the office of the clerk of the District Court of said Washington

county a petition of Nathaniel McClure, Michael Hayes, and O. H. Prizer, John Mather and W. R. Nugent, who sue as well for themselves as for divers other residents and property holders of said county, praying said court to perpetually enjoin and restrain Samuel G. Owen, treas. of said co., and his successors in office, from collecting the railroad tax now levied or hereafter to be levied for the purpose of paying the interest on one hundred and fifty thousand dollars of the bonds of said county issued to said Mississippi and Missouri Railroad Co., and to perpetually enjoin and restrain said Sam'l P. Young, judge as aforesaid, and his successor in office, from levying any other or further taxes in said county for railroad purposes and for other and general relief. And unless you appear in the District Court of said county and answer thereto on or before the morning of the
102 second day of the November term thereof, for the year 1860, judgment will be rendered against you thereon.

WRIGHT & BALDWIN.
PATTERSON & SCOFIELD,
Att'y for County.

Which notice is endorsed as follows:—

We acknowledge due and proper service of this notice on this 27 day of April, 1860, and wave any copy of petition or notice. S. P. Young, county judge. Samuel G. Owen, treasurer.

103 [We acknowledge due and proper service of this notice on this 27th day of April, 1860, and wave any copy of petition or notice. S. P. Young, county judge. Samuel G. Owen, treasurer.]

I received this notice for service April 27, 1860. I served the within notice on the Mississippi and Missouri Railroad Company by reading the same to James Dawson, agent for said company, at Washington, Washington county, Iowa, in his presence and hearing, and he demanded a copy of the notice, and I gave him a copy of the within notice, and no copy of petition, as was demanded April 27th, 1860.

JAMES R. EASTON,
Sheriff of Washington Co., Iowa.

Sheriff's fees.

Service	50
Copy	15
	65

104 And afterward, to wit, on the 26th day of July, 1860, there was filed in the office of said court an answer of the Mississippi and Missouri Railroad Company, in the words and figues following, to wit:

In the Washington District Court.

Answer of the Mississippi and Missouri Railroad Company.

NATHANIEL MCCLURE AND OTHERS
vs.
THE COUNTY JUDGE OF WASHINGTON COUNTY
and others.

The Mississippi and Missouri Railroad Company, the corporation named in said petition, come and say that said corporation is proper party defendant to said petition, and pray to be made a defendant thereto.

2d. And for answer to said bill, say that the recitals in said bill of the various questions submitted by the county judge, and the votes of the people thereon, are correctly set forth in the exhibits to said bill, and so far as the allegations of the bill differ from the exhibits, they are untrue, and the recitals of the bill, that two questions were submitted on the 7th of August, 1854, and not one question, are untrue.

3d. It is also true that the fifty thousand dollars in bonds of said county under the votes of 7th of August, 1854, and one hun-
105 dred thousand dollars in the bonds of said county under the
vote of 5th of April, 1858, were on the 7th of July, 1858, issued and delivered to the said M. & M. Railroad Company in the manner set forth in the bill.

4. It is also true, as the defendant is informed, that the tax referred to in said bill has been levied and collected in part.

5. This defendant denies that said tax is [is] illegal and unwarranted, or that the collection thereof is so, or that the plaintiffs are injured thereby.

6th. This defendant denies that the proposition of 7th of August, 1854, was not submitted in compliance with the law, denies that a double proposition or two questions were submitted by that vote, without warrant of law.

7. This defendant denies that the bonds were issued, and that the stock subscribed to a company pretending to have this defendant's name.

8. The stock was issued and accepted by the proper county officers in the Oscaloosa division of the M. & M. Railroad Company, which is not a reason in the law why said tax should not be collected if the stock was not such as the vote required. The county of Washington has made no complaint thereat, has accepted the certi-
106 ficates, and so far from the county being injured thereby it is
benefited, that division of the said road having cost at least ten thousand dollars per mile less than the main stem.

8. The proposition of the 5th April, 1858, did require a bond to be given to complete the road to the town of Washington by the 1st of September, 1858, and the bond was given, road was completed to Washington before that time, and no bonds were issued until the

proper officers of the county knew that it would be done. As the conditions have been performed, the want of a bond, if true, does not invalidate the tax.

9. At the time of submitting said question this defendant avers, that the constitution of this State did give authority to counties in this State to issue bonds, subscribe stock and levy taxes for the purposes contemplated in said votes.

10. The legislature had then conferred the power to do all the acts complained of when the bonds issued thereon belonged to bona fide holders, who had taken them on the faith of judicial decisions of this State.

11. The attempt to collect said tax is legal and constitutional, and the proper officers have the power under the laws to collect the same.

12. This defendant denies that this defendant, or its agents or
attorneys, had full knowledge, or any knowledge, of all the
107 circumstances of said votes, and took the same with notice of
any defects or irregularities complained of.

This defendant denies that the plaintiffs have no knowledge that said bonds have been transferred. They knew that the bonds were voted to be sold to rais money to built the railroad. They knew the road had been completed from the east line of the county to the town of Washington, about 11 miles, and that said road had cost at least thirty-one thousand dollars per mile.

This defendant denies that the holders of said bonds had any knowledge of the want of power in the county to issue the same, or any irregularities in the issue of said bonds.

And this defendant says that Thomas Durant and Betsey D. Tracy, of Massachusetts, Joseph E. Sheffield, of Connecticut, and Clark Durant, Thomas Dunn, William Newton and Richard Mortimer, citizens of the State of New York, are the bona fide holders for value of one hundred and thirty-two thousand dollars of said bonds, and John S. Cotten the balance, without notice, and are necessary and proper parties to this bill, and without being made
parties no decree can be made in the cause.

108 13. The terms of the proposition of 7th August, 1854, that
the bonds were to be issued as fast as the work progressed,
was fully complied with; before a single bond was issued the company had done one hundred thousand dollars of work in said county, and so far from the company having abandoned the work, or the bonds issued before it was done, it was completed before the 1st September, 1858; they then had completed and in operation 11 miles of road through said county to the county seat, costing the company at least three hundred thousand dollars.

14. The vote of the people authorized the said bonds to be made payable, principal and interest, in New York, and the law fully authorized the same to be done. The law does know another place of payment for a county debt than the county treasury.

This defendant has caused this answer to be signed with its common seal and to be attested by its secretary.

In witness whereof Hiram Price, the secretary of said company, has affixed the common seal of said corporation hereto and signed his name, this 24th day of July, A. D. 1860.

[SEAL.] H. PRICE, *Sec'ty.*

109 STATE OF IOWA, *County of Scott* :

I, John E. Henry, a director of said M. & M. Railroad Company, do declare on oath that I have read the foregoing answer. I have personal knowledge of all the main facts therein set forth, and believe them to be true; and as to the owners of the above-named bonds, I have been informed that they are as set forth in the foregoing answer, and believe the information to be true. I believe all the bonds referred to have been sold to bona fide holders, without notice of any defect in the same.

JOHN E. HENRY.

STATE OF IOWA, *County of Scott* :

Be it known that on the 14th day of July, A. D. 1860, came before me, a notary public in and for said county, John E. Henry, to me personally known, and being duly sworn did make oath to and subscribed the foregoing jurat.

Given under my hand and seal notarial the date above written.

[SEAL.] JAMES GRANT,
N. P., Scott Co., Iowa.

Which was endorsed as follows : Nathaniel McClure et al. vs. S. P. Young, county judge, and other answer of M. & M. R. R. Co. Filed July 26th, 1860. Ralph Dewey, cl'k, by F. A. Thompson, dep't.

110 And afterwards, to wit, on the 13th Nov., 1860, there was filed in the office of the clerk of said District Court a motion in words and figures following, to wit:

Petition in chancery pending in the Washington County District Court.

NATHANIEL MCCLURE *et al.*
vs.
S. G. OWEN *et al.*

Comes now the complainants and represent to the court that since the filing of the original bill and the granting of the injunction in this cause, to wit, on the 26th day of July, 1860, the Mississippi and Missouri R. R. Co., one of said def'ts, filed their answer to said bill, in which the disclose the fact Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Clark Durant, Thomas Dunn, William Newton, Richard Mortimer and John S. Cotton, are the owners and holders of the bonds mentioned in said bill. That until the filing of said answer they did not know that said bonds had been transferred, or to

whom they had been transferred. They therefore move the court for leave to amend their said bill by making the above-named persons defendants, and requiring them in their answer to disclose the amount of bonds owned and held by each of them, when and for what consideration the same was purchased, and whether they or either
111 of them now have or at any time were stockholders or in any manner interested in said M. & M. R. R. Co., and the amount and nature of such interest, and that said amendment may be made without any prejudice to their said bill.

PATTERSON & SCOFIELD.

Which motion is indorsed as follows: McClure et vs. S. G. Owen et al. Motion for leave to amend bill. Filed Nov. 13, 1860. Ralph Dewey, cl'k.

And afterwards, to wit, on the 14th day of Nov., 1860, there was filed in the office of the said court an application for change of venue, in words and figures as follows, to wit:

State of Iowa, Washington District Court, in equity.

McLure and others
vs.
The County Judge of Washington
and others.

To the District Court of said county:

Now comes Clark Durant, who avers that he is a citizen of the State of New York; Thomas Durant and Betsey D. Tracy, who aver that they are citizens of the State of Massachusetts; Joseph E. Sheffield, who avers that he is a citizen of the State of Con-
112 necticut; and Thomas Dunn, William Newton and Richard Mortimer, who aver that they are citizens of the State of New York, and aver that they have been made co-defendants in this cause; that the plaintiffs are all citizens of the State of Iowa; that these defendants are not citizens of the State of Iowa, but citizens of the States above named; that the amount in controversy in said suit exceeds the sum of five hundred dollars, exclusive of costs; and they pray that said cause may be removed from this court to the southern division of the District Court of the United States for the State of Iowa.

GRANT,
For the said defendants.

State of Iowa, *County of* :

I, James Grant, do declare on oath that I have read the foregoing petition; that I am acquainted with the facts therein set forth, and the same are true.

JAMES GRANT.

Subscribed and sworn to by James Grant this 14th day of Nov., 1860.

R. DEWEY, *Cl'k.*

Which application is indorsed as follows: Clark Durant v. Washington Co. Application for change of venue. Filed Nov. 14, 1860. R. Dewey, cl'k.

113 And afterwards, to wit, on the 14th day of November, 1860, there was filed in the office of said clerk a motion to transfer, in the words and figures following, to wit:

State of Iowa, Washington Dist. Court, in equity.

McCLURE AND OTHERS
vs.
THE COUNTY OF WASHINGTON AND OTHERS.

The plaintiffs will take notice that Clark Durant, Thomas Dun, William Newton, and Richard Mortimer, of New York; Thomas Durant and Betsey D. Tracy, of Massachusetts; and Joseph E. Sheffield, of Connecticut, will, on the day of , or as soon as counsel can be heard, will apply to remove said cause from the State to the District Court of the United States for the southern division of Iowa, held at Keokuk, and hereunto annexed is a copy of the petition for removal.

GRANT,
For said defendants.

Which motion is endorsed as follows: McClure and others vs. Washington Co. Filed Nov. 14th, 1860. Ralph Dewey, cl'k.

114 467.—*Bond for removal to U. S. Dist. Ct.*

STATE OF IOWA, *County of Washington.*

Know all men by these presents, that we, Clark Durant, Joseph E. Sheffield, Thomas Durant, Betsey D. Tracy, Thomas Dunn, Richard Mortimer, and William Newton and James Grant, surety, are held and firmly bound unto Nathaniel McClure, John Mather, Michael Hays, O. H. Prizer and Wm. R. Nugent, in the penal sum of five hundred dollars, to which payment we bind ourselves and each of us.

Given under our hands this 14th day of October.

The conditions of this obligation is this, whereas the above-named principal obligors have applied to the District Court of the county of Washington, in said State, to remove and transfer from said court the case of McClure and others, the above obligees, vs. the county of Washington and others, from said District Court to the District Court of the United States for the southern division in the State of Iowa:

Now if the said obligors shall, on the first day of the next session of said District Court of the State of Iowa, southern division, enter in said court copies of said process against them, and shall also

115 appear and enter special bail in said cause, is required, then this obligation to be void, otherwise to remain in full force and virtue.

CLARK DURANT,
By J. GRANT, *Attorney*.
J. E. SHEFFIELD,
THOMAS DURANT.
BETSEY D. TRACY,
THOMAS DUNN
WILLIAM NEWTON,
RICHARD MORTIMER,
By J. GRANT, *Att'y*.
NORMAN EVERSON.
JAMES GRANT.

Which bond is endorsed as follows: Clark Durant vs. Washington county. Application for change of venue. Filed Nov. 14th, 1860. R. Dewey, cl'k.

116 And afterwards, to wit, on the 16th day of November, 1860, the following matter of record was made in the records of said court in the words and figures following, to wit:

Motion to transfer overruled.

NATHANIEL MCCLURE *et al.*
vs.
S. G. OWEN & OTHERS.
} 467.—Writ of injunction.

Now on this 16th day of Nov., 1860, this cause comes on to be heard on motion to transfer this cause from this court to the United States District Court for the southern district of the State of Iowa, held at Keokuk, Iowa.

Motion overruled.

WM. LOUGHRIDGE, *Judge*.

117 And afterwards, to wit, on the 16th Nov., 1860, there was filed in the office of the clerk of the said court an answer in words and figures following, to wit:

In the Washington County District Court.

Bill in equity.

NATHANIEL MCCLURE AND OTHERS,
vs.
S. P. YOUNG, COUNTY JUDGE, AND OTHERS.
}

Now come Thomas Durant and Betsey D. Tracy, citizens of the State of Massachusetts; Joseph E. Sheffield, a citizen of the State of Connecticut; Clark Durant, Thomas Dunn, William Newton and

Richard Mortimer, citizens of the State of New York, and say, that Thomas Durant is the owner of twenty-five of said bonds of one thousand dollars each, and twenty of five hundred each; that Betsey D. Tracy is the owner of eight of said bonds of five hundred dollars each; that Joseph E. Sheffield is the owner of twenty-five of said bonds of one thousand dollars each; that Clark Durant is the owner of twenty-three of said bonds of one thousand dollars each, and one of five hundred; that Thomas Dunn is the owner of two of said bonds of one thousand dollars each, and sixteen of five hundred dollars each; 118 that William Newton is the owner of twenty of said bonds of five hundred dollars each; and Richard Mortimer is the owner of twenty-five of said bonds of one thousand dollars each, making in all the sum of one hundred and thirty-two thousand and five hundred dollars. And they aver, that they have a direct interest in the result of said suit, and they pray that they may be made defendants thereto. And said defendants admit that said votes were had, and said records made, and said bonds issued in compliance with said votes, as set forth in said petition; they admit the levy of the taxes set out in plaintiffs' petition, and that the proper county officers were proceeding to collect the same when their bill was filed; but these defendants deny that the levy of said tax is illegal or without authority of law. They know nothing of the allegation of the petitioners, that they voted against the same; but they insist that if they were opposed to the issue of said bonds they should have made the application to restrain the issue before they were issued; they deny that the collection of the tax is any injury to the plaintiff.

119 1. They deny that the proposition of the 7th of August, 1854, was in any manner illegal in the form of its submission. They deny that it was a double proposition; it was simply one proposition to change a subscription from one proposed railroad to another.

2. They deny that the bonds were issued to any other company except the one named in the vote.

3. They know nothing of the issue of stock in the Oskaloosa division of the M. & M. Railroad Company, and require proof. They aver that if true, it was for the benefit of the plaintiffs, as the Oskaloosa division costs over ten thousand dollars per mile less than the first division, and if the county of Washington has not obtained a certificate of stock in the proper division of the road, it has an adequate remedy against the corporation.

4. They deny that no security was given as required for the completion of said railroad by the time stated, but it would not be material if no bond was given. The road was finished by the time required, and the county of Washington has the performance of the obligation instead of the security therefor.

5. They deny that the constitution of the State at the time named contained no authority to the counties of this State to do the act complained of.

120 6. The legislature of this State did confer the power named, and the courts of this State have repeatedly so decided in

cases where the bonds were issued and in the hands of the bona fide holders.

7. The attempt to collect said tax is both constitutional and lawful.

8. They deny that the said company, its agents or attorneys, took the said bonds with full or any notice of any defect or irregularities in the issue of said bonds. They deny that said bonds have not been transfered. They and each of them deny than they had any knowledge of the want of power in the county to issue the same, or that they had any notice of any irregularity or illegality in the issue of said bonds, but they purchased the same in the usual course of trade, without notice of any defect in the same.

9. They deny that under the vote of 7th of August, 1854, the said bonds were issued long before any considerable proportion of the work was done, that less than half the work was constructed and all the work on the same had ceased; so far from it the work has progressed, is finished to Washington, in said county, and more than twice the entire subscription in Washington county has been expended in said county; and if not any of it was ever completed
121 it would not effect these defendants as bona fide holders.

10. They aver that the county judge had power to make the bonds payable in New York; the does know another place where the county is to pay its debts, except at the treasury, and if the place of payment is void, it does not vitiate the bond. And these defendants further say, that they believe all of said bonds are held by bona fide holders, as well as those owned by themselves; and they pray that this court may dismiss said bill. And they aver that the county judge and recorder have neglected to levy and collect the tax required by said vote to pay said interest, and the arrears of interest due thereon amounts to seventeen thousand dollars and upwards, and they pray that said county judge and treasurer may be adjudged and decreed immediately to collect the taxes already levied, and hereafter to levy and collect so much, not exceeding said five and three mills as will pay the semi-annual interest on said bonds, and for such other relief as the nature of the case may require.

GRANT, *for Defendants.*

122 STATE OF NEW YORK,
County of New York:

I, Clark Durant, declare on oath that I am one of the above-named defendants; that I have read the foregoing answer; that so far as the facts therein stated are of my own knowledge, they are true, and so far as stated from information, I believe them to be true.

CLARK DURANT.

Witness: H. C. CRANE.

STATE OF NEW YORK,
City and County of New York, ss:

Be it known that on this 10th day of July, A. D. 1860, came before me Clark Durant, to me personally known to be the identical person named in the foregoing affidavit, and being duly sworn by me made oath to and subscribed the foregoing affidavit.

Given under my hand and seal official the date above written.

[SEAL.] EDWIN F. COREY,
Commissioner for the State of Iowa in New York.

Which answer is endorsed as follows: Nathaniel McClure and others vs. S. P. Young, county judge, and others. Answer filed Nov. 16th, 1860. Ralph Dewey, clerk.

123 And afterwards, to wit, on the 16th day of November, 1860, there was filed in the office of said clerk a motion to dissolve injunction, in the words and figures following, to wit:

In Washington District Court.

Motion to dissolve injunction.

NATHANIEL MCCLURE
vs.
S. P. YOUNG, WASHINGTON COUNTY judge, J. E. Sheffield, Durant, *et al.*

The defendants, M. and M. R. R. Co., Clark Durant, Jos. E. Sheffield and other bond-holders, now move to dissolve the injunction—

First. Because the security is not sufficient.

Second. Because the answers deny all the equity of the bill.

Third. Because the answer discloses that the bonds have passed to bona fide holders, and against them the plaintiffs are not entitled to the relief sought.

JAMES GRANT,
Att'y for M. and M. R. R. Co.,
J. E. Sheffield, C. Durant.

Which is endorsed as follows: Washington Dist. Court. Nathaniel McClure et al. vs. S. P. Young, co. judge, Wash. co., et al. Motion to dissolve injunction. Jas. Grant, def't att'y. Filed Nov. 16, 1860. Ralph Dewey, cl'k.

124 And afterwards, to wit. on the 17th day of November, 1860, there was filed in the office of said court a motion to strike from the files the motion to dissolve the injunction, in the words and figures following, to wit:

A. N. MCCLURE *et al.*
vs.
S. G. OWEN *et al.*

Comes now the complainant and moves the court to strike from the files the motion of Clark Durant to dissolve the injunction in this cause, for the following reasons:

1. By the rules of this court complainant has 20 days from the filing of the answer to reply to or except to the same.

2. Def't cannot move to dissolve until he has given notice to the other def'ts.

3. Def't cannot move to dissolve untill all the def'ts have answered.

PATTERSON & SCOFIELD.

Which is endorsed as follows: A. McClure vs. S. G. Owen. Motion. Filed Nov. 17th, 1860. Ralph Dewey, cl'k.

125 And afterwards, to wit, on the 16th day of Nov., 1861, there was made in the records of said court an entry of record, in words and figures as follows, to wit:

Writ of injunction.

NATHANIEL McCLURE *et al.*
vs.
S. G. OWEN *et al.*

Now on this 16th day of Nov., A. D. 1861, this cause comes on to be heard and is continued.

WM. LOUGHRIDGE, *Judge.*

And also afterwards, to wit, on the 9th day of April, 1862, there was made in the records of said court a record entry in words and figures following, to wit:

Injunction.

NATHANIEL McCLURE *et al.*
vs.
S. G. OWEN *et al.*

Now on this 9th day of April, A. D. 1862, this cause comes on to be heard and is continued.

WM. LOUGHRIDGE, *Judge.*

126 And afterwards, to wit, on the 16th day of Sept., 1862, there was made in the records of said court an entry of record in words and figures following, to wit:

NATHANIEL McCLURE *et al.*
vs.
S. G. OWEN *et al.*

Now on this 16th day of Sept., A. D. 1862, this cause is submitted to the court.

WM. LOUGHRIDGE, *Judge.*

And afterwards, to wit, on the 22nd day of January, 1863, there was made in the records of said court an entry of record in words and figures as follows, to wit:

Injunction.

NATHANIEL McCLULE *et al.*
vs.
SAMUEL G. OWEN *et al.*

Now on this 22nd day of January, A. D. 1863, this cause comes on to be heard and is submitted to the court.

WM. LOUGHRIDGE, *Judge.*

127 And afterwards, to wit, on the 18th day of January, 1864, there was filed in the office of said clerk a motion to substitute board of supervisors as defendants, in the words and figures following, to wit:

Motion to substitute board of supervisors def'ts.

NATHANIEL McCLURE *et al.*
vs. } 467.
S. G. OWEN *et al.*

Comes now the plaintiffs and represents that by the laws of the State of Iowa, now in force, the board of supervisors of a county are charged with the duties heretofore performed by the county judge, in refference to the levy of the revenue of the county, and ask that the board of supervisors of the county of Washington, Iowa, may be substituted as defendants for the county judge of said county.

PATTERSON & SHERMAN,
Att'ys for Pl'ff.

Which is endorsed as follows: Nathaniel McClure. Motion to substitute board of supervisors def't. Filed July 18th, 1864. R. Dewey, cl'k, by W. A. Vandoren, dep.

128 And afterwards, to wit, on the 18th day of January, 1864, there was filed in the office of said court a motion to substitute plaintiffs, in the words and figures following, to wit:

NATHANIEL McCLURE *et al.*
vs.
SAMUEL G. OWEN *et al.*

Bill for injunction pending in the District Court of Washington county, Iowa.

Comes now the pl'ffs in this cause and sugest to the court here that since the last continuance of this cause, Nathaniel McClure, one of the plaintiffs, has departed this life, and that Amanda M. McClure and T. F. Sherman have been appointed his executors, pl'ff; then ask that said executors be substituted as parties pl'ff.

A. H. PATTERSON,
Att'y for Pl'ffs.

Which is endorsed as follows: Nathaniel McClure vs. S. G. Owen. Motion to substitute exec. of the plaintiff. No. 63. Filed Jan'y 18th, '64. R. Dewey, cl'k. By W. A. Vandoren, dep.

129 And afterwards, to wit, on the 19th day of January, 1864, there was filed in the office of said court exceptions to answer of part of defendants, in the words and figures following, to wit:

McClure
vs.
S. G. Owen.

The complainants except to the last clause of the answer of Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Clark Durant, Thomas Dunn, William Newton and Richard Mortimer, and for cause say that said paragraph is not responsible to any portion of said bill, contains matter which can only be set up by way of cross-bill, and cannot be interposed in this action for the want of proper parties. They therefore ask that the same may be stricken from the answer.

PATTERSON & SHERMAN,
Att'ys for Plaintiff.

Which is endorsed as follows: N. McClure et al. vs. S. G. Owen et al. Except'. to ans. of part of defendants. Filed Jan. 19, 1864. R. Dewry, cl'k. Pat. Sherman, pl'ffs att'y.

130 And afterwards, to wit, on the 19th day of January, 1864, there was filed in the office of said clerk a motion to make injunction perpetual, in the words and figures following, to wit:

Motion to make injunction perpetual.

McClure *et al.*
vs. 467.
Owen *et al.*

The complainants in this cause move the court here to make the injunction in this cause perpetual, and for cause state:

1. That the matters and things set up by said def'ts in their answer show no cause against making said injunction perpetual.
2. The bill and answer show that complainants are entitled to the remedy sought.
3. There being no law of the State of Iowa authorizing the proceedings prior to the issue of said bonds, and no law authorizing the issuance of bonds by counties in Iowa for railroad purposes, all of said proceedings, both in including the votes and issuance of the bonds, were absolutely nul and void, and the bonds being thus void in their

inception, the county officers have no legal right to levy or collect tax for their payment, and pl'ffs are entitled to the relief sought, all the proceedings had in reference to the submission of the 131 various propositions mentioned in the bill and answers, and the subscription of the stock and issuance of such bonds being without warrant in law and absolutely null and void.

Those holding the same, although innocently and for a valuable consideration, can only look to those from whom they purchased for a reimbursement of the money expended in the purchase.

PATTERSON & SHERMAN,
Att'ys for Pl'ff.

Which is endorsed as follows: N. McClure vs. S. G. Owen. Motion to make injunction perpetual. Filed Jan'y 19th, 1864. R. Dewey, cl'k.

132 And afterwards, on the 19th day of January, 1864, there was made in the records of said court an entry of record in the words and figures following, to wit:

JANUARY 19TH, 1864.

NATHANIEL McCLURE *et al.*
vs.
S. G. OWEN *et al.*

The death of the plaintiff in this cause suggested Amanda M. McClure and L. T. Sherman, executors of plaintiff, is by the court substituted as plaintiffs in this cause.

WM. LOUGHRIDGE, *Judge.*

And afterwards, to wit, on the 24th day of Sept. A. D. 1864, the following entry of record was made in the records of said court, to wit:

NATHANIEL McCLURE *et al.*
vs.
SAMUEL G. OWEN *et al.*

Now on this 24th day of Sept., A. D. 1864, this cause comes on to be heard and is submitted to the court.

WM. LOUGHRIDGE, *Judge.*

And afterwards, to wit, on the 15th day of May, A. D. 1868, there was filed in the office of the clerk of said court a demurrer to the return, in words and figures following, to wit:

133 **Circuit Court of the United States for the district of Iowa.**

Demurrer to return.

THE UNITED STATES ON THE relation of Clark Durant
vs.
THE BOARD OF SUPERVISORS OF Washington county.
} Mandumus, 2d case, No. 467.

The plaintiff demurs to the defendant's return and for causes of demurrer, says:

The plaintiff demurs to that part of the return of the defendants beginning at the words "def'ts further answer," &c., to the end thereof, wherein the defendant sets out certain proceedings of the District Court of Iowa for Washington county, for the following causes:

1st. The record thereof is imperfect, not setting out the judgment of the State Supreme Court, reversing the judgment of the court below.

2. The said part of said answer leaves the date of the commencement of the plaintiffs' suit in this court blank.

3. Because the judgment of the State Supreme Court re-
134 versing the judgment of the Washington District Court dissolves the injunction of the latter court, and that proceeding is no bar to the writ in this cause.

4. Because any defence arising out the proceedings in the State Court not only ought to have been, but were pleaded in bar of the action in this court, and being held invalid, or not being pleaded as a bar to the writ, is no bar now to the writ in this cause.

5. Because the mandamus in this cause in the process to enforce the judgment in place of the execution returned "no property," and no proceedings in a State court can bar the final process of this court in the judgment.

6. The plaintiff, Durant, having commenced his action in this court before he intervened in the State court, and his intervention in that court having been pleaded in this court, overruled and judgment rendered, no proceedings in the State court can be used as a bar to the enforcement of the judgment herein rendered.

135 7. Because this court, having jurisdiction to render the judgment in this court, has jurisdiction to enforce it by said writ of mandamus; no proceedings in the State court can arrest the writ.

GRANT, *for the Plaintiff.*

136 And afterwards, to wit, on the 27th day of May, A. D. 1868, at a term of the Circuit Court of the United States for the district of Iowa, the same being of the May term, A. D. 1868.

Present: The Hon. J. M. Love, district judge.

Among other the following proceedings were had, to wit:

THE UNITED STATES EX REL.
Clark Durant
vs. } No. 467.
THE BOARD OF SUPERVISORS
of Washington county.

This cause came on to be heard, Grant for the plaintiff, Strong & Lewis for the defendants; upon argument the demurrer was considered, and the court doth order and adjudge that the demurrer be sustained and the return held insufficient to the alternative writ, and the defendants abide by the demurrer. Thereupon it is ordered and adjudged that a peremptory writ of mandamus issue from this court, as prayed for in said alternative writ of mandamus, and the defendants prayed for a writ of error, which is allowed, they being required to give bond in the sum of $500 00, conditioned as the law directs.

137 And afterwards, to wit, on the 5th day of June, A. D. 1868. the same being of the May term of said court, the following was ordered of record, to wit:

THE UNITED STATES EX REL.
Clark Durant
vs. } No. 467.
THE BOARD OF SUPERVISORS OF
Washington county, Iowa.

And now, on this 4th day of June, A. D. 1868, came on upon motion of defendant for approval of the appeal bond this day filed, and the court being advised approve said bond.

138 467.—*Bond filed June* 4, '68.

Know all men by these presents, that we, the board of supervisors of Washington county, &c., State of Iowa, and Henry Strong and John W. Rankin, do acknowledge ourselves bound to Clark Durant, of , in the penal sum of five hundred dollars.

The condition of this obligation is this: that whereas the board of supervisors of Washington county, in State of Iowa, are about to take a writ of error from a decision of the Circuit Court of the United States for the district of Iowa to the Supreme Court of the United States, in a certain cause therein pending, wherein the U. S. ex rel. Clark Durant is pl'ff, and the board of supervisors of Washington is defendant:

Now, if said board of supervisors shall duly prosecute their writ of error and pay all damages and costs which may be adjudged against them, and abide by and perform all the orders and judgments of said

Supreme Court of the United States, then this obligation to be void, otherwise in full force.

June 4, '68.

Board of Supervisors of Washington county, Iowa, by—

H. STRONG, *their Att'y.*
HENRY STRONG, *Surety.*
J. W. RANKIN, *Surety.*

The above bond approved June 4, 1868.

J. M. LOVE,
Judge U. S. Court.
W. G. WOODWARD, *Clerk.*

139 Approved and filed by me.

W. G. WOODWARD,
Clerk C. C. U. S.

467.—*Bond—Filed June* 9, '68.

I, J. Rheinart, commissioner for the Circuit Court of the United States for the district of Iowa, hereby certify that the signers of the above, as bondsmen for the supervisors of Washington county, Iowa, personally appeared before, and upon their several oaths by me to them administered, stated that they severally were worth over one thousand dollars in property exempt from execution, and that they are freeholders in this county.

Witness my signature at Washington, Washington co., this 5 day of June, 1868.

J. RHEINART,
U. S. Commissioner.

140 467.—*Writ of error.*

UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the Circuit Court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea in said Circuit Court for said district, wherein the United States of America, on the relation of Clark Durant, is pl'ff. and the board of supervisors of the county of Washington is defendant, a manifest error hath happened, to the damage of said defendant, you are hereby commanded, if judgment be therein given, that then, under your seal, you send the record of proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court, to be then and there held; that said record being inspected, the said Supreme Court may cause the said error to be corrected, which of right ought to be.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, this 4th day of June, 1868.

[L. S.] W. G. WOODWARD,
Clerk of C. C. U. S., Iowa.
[With the seal affixed.]

141 I acknowledge and accept service of this writ of error, and rec'd copy of the same, this day, June 4th, 1868.

CLARK DURANT,
By GRANT & SMITH,
His Att'ys.

142 467.—*Bond—Filed June* 4, '68.

Know all men by these presents, that the board of supervisors of Washington county, in the State of Iowa, acknowledge ourselves indebted to Clark Durant in the penal sum of five hundred dollars, to be levied, &c. Given, &c.

The condition of this obligation is such, that whereas the said board of supervisors of Washington county, Iowa, have taken a writ of error from a decision of the Circuit Court of the United States for the district of Iowa to the Supreme Court of the United States, in a certain cause therein pending, wherein the United States ex rel. Clark Durant is pl'ff, and the said board of supervisors of Washington county is def't:

Now, if said board of supervisors shall duly prosecute their writ of error and pay all damages and costs that may be adjudged against them, and abide and perform all the orders and judgments of said Supreme Court of the United States, then this obligation to void; otherwise in full force and effect.

Witness our hands this 8th day of June, A. D. 1868.

The Board of Supervisors of Washington county, Iowa, by—
HENRY STRONG, *their Atty.*
J. W. TALLMAN.
JNO. ALEX. YOUNG.
WM. B. MINGSLY.
REUBEN ISRAEL.

143 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the Circuit Court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea in said Circut Court for said district, wherein the United States of America on the relation of Clark Durant is pl'ff, and the board of supervisors of the county of Washington is defendant, a manifest error hath happened to the damage of said defendant, you are hereby commanded, if judgment be therein given, that then, under your seal, you send the record of proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court, to be then and there held, that said record being inspected, the Supreme Court may cause the said error to be corrected, which of right ought to be.

144 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said court, this 4th day of June, 1868. Witness.

[SEAL.] W. G. WOODWARD,
Clerk C. C. U. S., Iowa.
[With the seal affixed.]

I acknowledge and accept service of this writ of error, and rec'd copy of the same this day, June 4, 1868.

CLARK DURANT,
By G. GRANT & SMITH,
His Att'ys.

Endorsed: Sup. Ct. U. S., 1868 term. No. 342. U. S. ex. rel. Clark Durant vs. Board of Supervisors of Washington county. Writ of error. Filed 15th December, 1868.

145 United States of America ex rel. Clark Durant and Clark Durant:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of Iowa, wherein the United States, on the relation of Clark Durant, is pl'ff, and the board of supervisors of Washington county is defendant, to show cause, if any you have, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Sam'l F. Miller, one of the justices of the Supreme Court of the United States, the 6th day of June, A. D. 1868.

SAM. F. MILLER.

146 I accept service of this citation this 19th day of June, A. D. 1868.

GRANT & SMITH,
Clark Durant's Att'ys.

Endorsed: 467. U. S. ex. rel. Clark Durant vs. B'd Sup. Wash. Co. Citation. Filed June 23d, 1868. W. G. Woodward, clr'k.

Sup. Ct. U. S., 1868, Dec. term. No. 342. Washington County vs. Durant. Citation and service. Filed 21 December, 1868.

147 Supreme Court of the United States.

UNITED STATES EX REL. CLARK DURANT, deft's in error,
vs.
THE BOARD OF SUPERVISORS OF WASHINGTON county, pl'ffs in error.

Now come the board of supervisors of Washington county, Iowa, and say there is error in the record of this cause, in this: that the court below sustained the demurrer of relator to the answer of def'ts, and this error the def'ts assign, and pray the judgment of this court.

H. STRONG,
Att'y for Def'ts.

Endorsed: Sup. Ct. U. S. No. 342. U. S. ex rel. Clark Durant vs. The Board of Supervisors of Washington Co. Assignment of error. Filed 10th December, 1868.

148 Circuit Court of the United States for district of Iowa.

I, W. G. Woodward, clerk of the Circuit Court of the United States for the district of Iowa, that the above and foregoing is a full, true and complete transcript of the proceedings had in said Circuit Court in the above-entitled cause, and that the same is as fully true and complete as appears of record in my office.

In testimony whereof I have hereunto set my hand and the seal of said court. Done at the city of Des Moines, this 27th day of Nov., A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Endorsed: No. 467. U. S. Circuit Court, district of Iowa. United States ex rel. Clark Durant v. Board of Supervisors of Washington County, Iowa. Transcript.

○

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. [illegible]

THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY,
IOWA, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. RICHARD [illegible].

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF IOWA.

[illegible]